

S275431

CASE NO. 21-16201

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GEORGE HUERTA,

Plaintiff and Appellant,

v.

CSI ELECTRICAL CONTRACTORS, INC.,

Defendant and Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
CASE No. 5:18-cv-06761-BLF
BETH LABSON FREEMAN, UNITED STATES DISTRICT JUDGE

APPELLANT'S EXCERPTS OF RECORD VOLUME 2 OF 6

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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself
and all others similarly situated and as a
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;
California Flats Solar, LLC, a Delaware Limited
Liability Company; CA Flats Solar 130, LLC, a
Delaware Limited Liability Company; CA Flats
Solar 150, LLC, a Delaware Limited Liability
Company; Cal Flats Solar CEI, LLC, a Delaware
Limited Liability Company; Cal Flats Solar
Holdco, LLC, a Delaware Limited Liability
Company; CSI Electrical Contractors, Inc.; Milco
National Constructors, Inc.; California
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF
CLASS ACTION**

Stipulated Judgment

1 Plaintiff George Huerta and Defendant CSI Electrical Contractors, Inc. (“CSI”) (“Parties”),
2 through their attorneys of record, stipulate that judgment in this case (“Judgment”) be entered in favor
3 of Plaintiff and against CSI as follows:

4 1. CSI will pay to Plaintiff the amount of \$500.00 (“Payment”) on Plaintiff’s individual
5 claims that remain after the Court’s various prior orders, rulings, and findings of fact and law on CSI’s
6 motions for partial summary judgment (“Plaintiff’s Remaining Individual Claims”).

7 2. The Judgment is being stipulated to facilitate Plaintiff’s appeal of the Court’s various
8 prior orders, rulings, and findings on CSI’s motions for partial summary judgment that occurred prior
9 to the date of the Judgment. In this regard, the Parties agree that Plaintiff expressly reserves the right
10 and does not waive his right to appeal the Judgment or any or all of this Court’s prior orders, rulings,
11 and findings of fact and law in the above-captioned action (“Action”), including but not limited to the
12 Court’s prior orders, rulings, and findings of fact and law on CSI’s motions for partial summary.

13 3. The Payment will be due within 14 calendar days after either (1) the applicable date for
14 seeking appellate review of the Judgment has passed without a timely appeal or request for review
15 having been made, or (2) the Ninth Circuit Court of Appeals has rendered a final judgment affirming
16 the Judgment and the date for further appeal has passed without further appeal. If the Ninth Circuit
17 Court of Appeals reverses the Judgment or any of this Court’s orders, rulings, or findings of fact and
18 law in the Action, including but not limited to the Court’s prior orders, rulings, and findings of fact and
19 law on CSI’s motions for partial summary, and the action is remanded to this Court to enable Plaintiff
20 to pursue and recover those claims that the Ninth Circuit has ruled can go forward against CSI, then the
21 Payment will not become due for Plaintiff’s Individual Remaining Claims.


22 4. The Judgment does not resolve the issue of attorneys’ fees and costs. Either party may
23 make a motion for the award of attorneys’ fees and costs in accordance with applicable law after the
24 time periods set forth in paragraph 3. If the Ninth Circuit Court of Appeals affirms or reverses the
25 Judgment or any of this Court’s prior orders, rulings, and findings of fact and law in the Action, the
26 Parties reserve their rights to make a motion for attorneys’ fees or costs at the appropriate time in
27 connection with the Action.
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1 5. The Parties agree that the Judgment is not an admission of liability or guilt of any kind
2 and that the Judgment is not a finding that CSI acted with any negligence, active negligence, violated
3 the law in any way, engaged in any willful misconduct, or misconduct of any kind, or was an employer
4 of Plaintiff.

5 6. This Judgment resolves all of Plaintiff's Remaining Individual Claims in the Action. The
6 Judgment does not affect the claims of any other individuals or their ability to file any class or
7 collective action.

8 Dated: July 14, 2021

THE DION-KINDEM LAW FIRM

9
10 BY: 
11 PETER R. DION-KINDEM, P.C.
12 PETER R. DION-KINDEM
 Attorney for Plaintiff George Huerta

13 Dated: July 14, 2021

FORD & HARRISON LLP

14
15 BY: /s DANIEL B. CHAMMAS
16 DANIEL B. CHAMMAS
17 Attorney for Defendant
 CSI Electrical Contractors, Inc.

18 IT IS SO ORDERED.

19
20 Dated: _____

21 _____
22 Beth Labson Freeman
 District Court Judge

1 Daniel B. Chammas (SBN 204825)
Min K. Kim (SBN 305884)
2 FORD & HARRISON LLP
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3 Los Angeles, CA 90071
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4 Facsimile: (213) 237-2401
Email: dchammas@fordharrison.com
5 mkim@fordharrison.com

6 Attorneys for Defendant,
7 CSI Electrical Contractors, Inc.

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 George Huerta, an individual on behalf of
12 himself and all others similarly situated and
as a representative plaintiff,

13 Plaintiff,

14 v.

15 First Solar, Inc., a Delaware corporation;
16 California Flats Solar, LLC, a Delaware
Limited Liability Company; CA Flats Solar
130, LLC, a Delaware Limited Liability
17 Company; CA Flats Solar 150, LLC, a
Delaware Limited Liability Company; Cal
18 Flats Solar CEI, LLC, a Delaware Limited
Liability Company; Cal Flats Solar Holdco,
19 LLC, a Delaware Limited Liability
Company; CSI Electrical Contractors, Inc.;
20 Milco National Constructors, Inc.;
California Compaction Corporation; and
21 Does 1 through 10,

22 Defendants.
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Case No.: 5:18-cv-06761-BLF

**DEFENDANT CSI ELECTRICAL
CONTRACTORS' REPLY BRIEF IN
SUPPORT OF SECOND MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Date: November 18, 2021
Time: 9:00 a.m.
Ctrm: 3

State Complaint Filed: July 30, 2018
State First Amended
Complaint Filed: October 1, 2018
Removal Filed: November 7, 2018

1 Plaintiff's opposition brief recycles arguments already rejected by this Court and the Ninth
2 Circuit. In the event that the Court grants this motion, then there will be no more class claims
3 remaining and the Court should either preside over Plaintiff's remaining individual claims or
4 remand the action to state court. Even though the class was certified, because notice has not gone
5 out yet, this Court need not decertify the action or provide the class with any notice at all.
6 Because the merits of the certified claims have been resolved by this Court against Plaintiff, the
7 certification order is a nullity. *See Schwarzschild v. Tse*, 69 F.3d 293, 294-95, 297 (9th Cir. 1995)
8 ("district court granted the motion to certify on October 24th, 1991...On October 9th, 1992,
9 defendants filed a motion for summary judgment and a motion to decertify the class...On the
10 same day, plaintiff filed a motion for an order approving class notice. On December 9th, 1992, the
11 district court entered an order granting the defendants' motion for summary judgment and stating
12 that the defendants' motion to decertify and the plaintiff's motion to distribute notice were moot...
13 The unusual nature of the issue before us is due in large part to the fact that district courts
14 generally do not grant summary judgment on the merits of a class action until the class has been
15 properly certified and notified. The purpose of Rule 23(c)(2) is to ensure that the plaintiff class
16 receives notice of the action well *before* the merits of the case are adjudicated...Given that notice
17 would serve no purpose in this case save to require the plaintiffs to engage in a costly and
18 unnecessary exercise, we decline to apply [Rule 23\(c\)\(2\)](#) in a manner that is clearly contrary to the
19 intent of its framers."); *Faber v. Ciox Health, LLC*, 944 F.3d 593, 603 (6th Cir. 2019) ("we
20 consider the sufficiency of notice in an atypical sequence: The district court entered summary
21 judgment for Ciox after certifying the class but before notice could be sent...What is the status of
22 the class certification going forward? Although the district court issued a valid class certification,
23 the class members who could receive fair notice at this stage amount to an empty set. Neither
24 party challenges the formal validity of the class certification or that the district court can grant
25 motions on its preferred, though unusual, timeline. As for the class certification's functionality,
26 the impossibility of giving adequate notice to class members now, or ever, renders the class
27 certification inoperative. [Citation.] Unable to bind any class members, the class certification
28 carries no effect and is therefore a nullity.")

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Date: June 23, 2021

FORD & HARRISON LLP

By: /s/ Daniel B. Chammas
Daniel B. Chammas

PROOF OF SERVICE

I, Lillian Marquez, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 350 South Grand Avenue, Suite 2300, Los Angeles, California 90071.

On **June 23, 2021**, I served a copy of the following document(s) described below on the interested parties in this action as follows:

DEFENDANT CSI ELECTRICAL CONTRACTORS' REPLY BRIEF IN SUPPORT OF SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

BY U.S. MAIL: By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

ELECTRONICALLY: I caused a true and correct copy thereof to be electronically filed using the Court's Electronic Court Filing ("ECF") System and service was completed by electronic means by transmittal of a Notice of Electronic Filing on the registered participants of the ECF System.

SEE ATTACHED SERVICE LIST

FEDERAL: I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on **June 23, 2021**, at Los Angeles, California.

Lillian Marquez

SERVICE LIST

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<p>Lonnie Clifford Blanchard, III The Blanchard Law Group, APC 5211 East Washington Blvd., No. 2262 Commerce, CA 90040 Tel.: (213) 599-8255 Fax: (213) 402-3949 Email: lonnieblanchard@gmail.com</p>	<p>Attorneys for Plaintiff, George Huerta</p>
<p>Peter Roald Dion-Kindem The Dion-Kindem Law Firm Peter R. Dion-Kindem, P.C. 2945 Townsgate Road, Suite 200 Westlake Village, CA 91361 Tel.: (818) 883-4900 Fax: (818) 338-2533 Email: peter@dion-kindemlaw.com</p>	<p>Attorneys for Plaintiff, George Huerta</p>
<p>James A. Bowles Hill Farrer & Burrill LLP One California Plaza 300 S. Grand Avenue, 37th Floor Los Angeles, CA 90071 Tel.: (213) 621-0812 Fax: (213) 624-4840 Email: jbowles@hillfarrer.com</p>	<p>Attorneys for Defendant, Milco National Construction, Inc.</p>
<p>Daphne Mary Anneet Burke, Williams Sorensen, LLP 444 S. Flower Street Suite 2400 Los Angeles, CA 90071 Tel.: (213) 236-0600 Fax: (213) 236-2700 Email: dnneet@bwslaw.com</p>	<p>Attorneys for Plaintiff, California Compaction Corporation</p>



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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself
and all others similarly situated and as a
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;
California Flats Solar, LLC, a Delaware Limited
Liability Company; CA Flats Solar 130, LLC, a
Delaware Limited Liability Company; CA Flats
Solar 150, LLC, a Delaware Limited Liability
Company; Cal Flats Solar CEI, LLC, a Delaware
Limited Liability Company; Cal Flats Solar
Holdco, LLC, a Delaware Limited Liability
Company; CSI Electrical Contractors, Inc.; Milco
National Constructors, Inc.; California
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF
CLASS ACTION**

**Plaintiff's Opposition to Defendant CSI
Electrical Contractors, Inc.'s Second Motion
for Summary Judgment**

Pursuant to the Court’s Order issued orally at the Status Conference on June 3, 2021, Plaintiff opposes Defendant CSI Electrical Contractors, Inc.’s Second Motion for Summary Judgment. Plaintiff objects to the Court’s limitation of Plaintiff’s brief to only three pages as completely unfair.

I. PLAINTIFF HAS ESTABLISHED THE EXISTENCE OF A TRIABLE ISSUE OF FACT AS TO WHETHER THE SECURITY GATE WHERE THE BADGING OCCURRED WAS “THE FIRST LOCATION WHERE THE EMPLOYEE’S PRESENCE IS REQUIRED BY THE EMPLOYER” UNDER WAGE ORDER 16, PARAGRAPH 5(A)

A. Plaintiff’s evidence supports a finding by a jury that the Security Gate were the badging occurred was the first location where the employees’ presence was required.

Here, Plaintiff has established through declarations that the Security Gate was in fact the “first location where the employee’s presence is required” by CSI. (Huerta Decl. ¶¶ 11, 17; Clarno Decl. ¶¶ 9, 14; Garcia Decl. ¶¶ 9, 14; Tucker Decl. ¶¶ 11, 16.) (“When the mandatory entrance and exit security process occurred at the Phase 1 Security Gate, I was told by CSI management, by the security office, and by other management that the first place the other CSI workers and I were required to be at the beginning of the day in order to work was the Phase 1 Security Gate . . . (Huerta Decl., Dkt 128-2, ¶ 11; *see also* ¶ 17); “I was told by CSI management during my orientation for Phase 2 that the first place the other CSI workers and I were required to be at the beginning of the day in order to work was the Phase 2 Security Gate . . . (Clarno Decl., Dkt 128-3, ¶ 9; *see also* ¶ 14); “I was told by CSI management (including my foreman Daniel Jimenez), for Phase 2 that the first place the other CSI workers and I were required to be at the beginning of the day in order to work was the Phase 2 Security Gate . . . (Garcia Decl., Dkt 128-5, ¶ 9; *see also* ¶ 14); “I was told by CSI management during my orientation for Phase 2 that the first place the other CSI workers and I were required to be at the beginning of the day in order to work was the Phase 2 Security Gate . . . (Tucker Decl., Dkt 128-4, ¶11; *see also* ¶ 16).)

CSI did not produce any evidence contradicting these declarations in its moving or reply papers. At a minimum, Plaintiff’s evidence is sufficient to create an issue of fact that precludes summary judgment on the issue in CSI’s favor.

1 **B. There is nothing in Paragraph 5(A) that limits its effect to locations that are the only**
 2 **entrance to a specific property at which employees work.**

3 There is nothing in Paragraph 5(A) that limits its effect to locations that are the only entrance to
 4 a specific property at which employees work, nor is there any language in Paragraph 5(A) that requires
 5 employees “report to work” at the first location where their presence is required in order for Paragraph
 6 5(A) to be applicable. For example, if construction workers were required to be at a specific location at
 7 the beginning of the day that was not at an entrance to a specific property at which the employees
 8 worked, such as a gas station or the employer’s office, and then travel to where they worked for the day
 9 and “report to work” there, they would still be entitled to compensation for all travel to and from that
 10 first location under Paragraph 5(A). Similarly, if the Project had more than one entrance and some
 11 employees were first required to be present at one entrance and other employees were first required to
 12 be present at another entrance, they would all be entitled to be paid for travel time occurring after their
 13 respective entrances. Plaintiff does not need to establish that Plaintiff was required to enter the Project
 14 from a single entrance in order to pursue a 5(A) claim.

15 **C. There is nothing in Paragraph 5(A) that limits its effect to locations where a badging**
 16 **process occurs.**

17 Similarly, there is no language in Paragraph 5(A) that limits its effect to locations where a
 18 badging process occurs. If, for example, construction workers were required to be at a specific location
 19 at the beginning of the day, such as a gas station or the employer’s office, and then travel to where they
 20 “reported to work” and worked for the day, they would be entitled to compensation for all travel to and
 21 from that first location, regardless of whether there was any “badging” process at that first location or
 22 whether they “reported to work” at the first location.


23 Plaintiff has never contended that the requirement that Plaintiff “badge in” at the Security Gate
 24 each morning was the fact that obligated CSI to compensate Plaintiff for travel occurring after the
 25 Security Gate under Paragraph 5(A). Rather, Plaintiff contends that because the Security Gate was the
 26 location where his and the class members’ presence was first required, he and the class members were
 27 entitled to be paid for travel occurring thereafter under Paragraph 5(A). *Plaintiff would and does still*
 28 *have this 5(A) claim even if there was no badging process at the Security Gate.*

1 **II. THE COURT’S DECISION IN *GRIFFIN* IS NOT BINDING OR PERSUASIVE BECAUSE IT WAS BASED**
2 **ON A DIFFERENT EVIDENTIARY RECORD.**

3 This Court’s decision in *Griffin* is not binding or persuasive. *Griffin* involved a different
4 Defendant and a different plaintiff. In *Griffin*, the plaintiff did not present evidence in opposition to
5 Sachs’ summary judgment motion that employees were told by Sachs’ personnel that the Security Gate
6 where the badging occurred was the first location their presence was required. (See Decl. of Griffin,
7 Dkt No. 50-2; Decl. of Kevin Manhart; Dkt No. 50-3; Decl. of Maria Jimenez; Dkt No. 50-4; Eric
8 Manhart; Dkt No. 50-5; Decl. of Mark Bundren; Dkt No. 50-6; Francis Scott Lee Richmond, Jr.; Dkt
9 No. 50-7.) Moreover, Sachs had presented evidence that there was another location where their
10 presence was first required to meet with other employees and be transported by buggies to their daily
11 work sites and that they were paid for the buggy ride. (Rega Decl., Dkt No. 40-5, ¶ 3.) CSI has
12 presented no such evidence in this case.

13 Dated: June 22, 2021

THE DION-KINDEM LAW FIRM

14
15 BY: 
16 PETER R. DION-KINDEM, P.C.
17 PETER R. DION-KINDEM
18 Attorney for Plaintiff George Huerta
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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself
and all others similarly situated and as a
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;
California Flats Solar, LLC, a Delaware Limited
Liability Company; CA Flats Solar 130, LLC, a
Delaware Limited Liability Company; CA Flats
Solar 150, LLC, a Delaware Limited Liability
Company; Cal Flats Solar CEI, LLC, a Delaware
Limited Liability Company; Cal Flats Solar
Holdco, LLC, a Delaware Limited Liability
Company; CSI Electrical Contractors, Inc.; Milco
National Constructors, Inc.; California
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF
CLASS ACTION**

**Declaration of Peter R. Dion-Kindem in
Opposition to Defendant CSI Electrical
Contractors, Inc.'s 2nd Motion for Partial
Summary Judgment**

I, Peter R. Dion-Kindem, declare:

1. I am an attorney licensed to practice in California. I am co-counsel for Plaintiff George Huerta in this action. I have personal knowledge of the following facts.

Declaration of Peter R. Dion-Kindem in Opposition to Defendant CSI Electrical Contractors, Inc.'s Motion for Partial Summary Judgment

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2. A true and correct copy of my Declaration (Doc. #128-1) submitted in Opposition to Defendant CSI's first Motion for Partial Summary Judgment, submitted in this case, is attached hereto as ***Exhibit 1.***
 3. A true and correct copy of George Huerta's Declaration (Doc. #128-2) submitted in Opposition to Defendant CSI's first Motion for Partial Summary Judgment, submitted in this case, is attached hereto as ***Exhibit 2.***
 4. A true and correct copy of Kevin Clarno's Declaration (Doc. #128-3) submitted in Opposition to Defendant CSI's first Motion for Partial Summary Judgment, submitted in this case, is attached hereto as ***Exhibit 3.***
 5. A true and correct copy of Erick Tucker's Declaration (Doc. #128-4) submitted in Opposition to Defendant CSI's first Motion for Partial Summary Judgment, submitted in this case, is attached hereto as ***Exhibit 4.***
 6. A true and correct copy of Mark Garcia's Declaration (Doc. #128-5) submitted in Opposition to Defendant CSI's first Motion for Partial Summary Judgment, submitted in this case, is attached hereto as ***Exhibit 5.***

17 I declare under penalty of perjury under the laws of the State of California that the foregoing is
18 true and correct.

19 Dated: June 22, 2021



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Peter R. Dion-Kindem

Exhibit 1



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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself
and all others similarly situated and as a
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;
California Flats Solar, LLC, a Delaware Limited
Liability Company; CA Flats Solar 130, LLC, a
Delaware Limited Liability Company; CA Flats
Solar 150, LLC, a Delaware Limited Liability
Company; Cal Flats Solar CEI, LLC, a Delaware
Limited Liability Company; Cal Flats Solar
Holdco, LLC, a Delaware Limited Liability
Company; CSI Electrical Contractors, Inc.; Milco
National Constructors, Inc.; California
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF
CLASS ACTION**

**Declaration of Peter R. Dion-Kindem in
Opposition to Defendant CSI Electrical
Contractors, Inc.'s Motion for Partial
Summary Judgment**

Date: April 8, 2021

Time: 9:00 a.m.

Crtrm: 3

I, Peter R. Dion-Kindem, declare:

1. I am an attorney licensed to practice in California. I am co-counsel for Plaintiff George Huerta in this action. I have personal knowledge of the following facts.

Declaration of Peter R. Dion-Kindem in Opposition to Defendant CSI Electrical Contractors, Inc.'s Motion for Partial Summary Judgment

- 1 2. True and correct copies of pages from the deposition transcript of Jason McGinley, the
2 designated Person Most Knowledgeable of Defendant, that was taken in this action are attached
3 hereto as *Exhibit 1*.
- 4 3. A true and correct copy of the California Flats Solar, LLC, Site Health & Safety Plan,
5 Attachment D, Security Plan is attached hereto as *Exhibit 2*.
- 6 4. A true and correct copy of CSI and First Solar Contract, ¶3.9 is attached hereto as *Exhibit 3*.
- 7 5. A true and correct copy of the Cal Flats Solar Environmental Handout produced in this litigation
8 is attached hereto as *Exhibit 4*.

9
10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct.

12 Dated: March 18, 2021



13
14 Peter R. Dion-Kindem

Exhibit 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

- - - - -

George Huerta, an individual, on)
behalf of himself and all others)
similarly situated and as a)
representative plaintiff,)
Plaintiff,)

No. 5:18-cv-06761-LHK

vs.

First Solar, Inc., a Delaware)
corporation; California Flats)
Solar, L.L.C., a Delaware Limited)
Liability Company; CA Flats Solar)
130, L.L.C., a Delaware Limited)
Liability Company; CA Flats Solar)
150, L.L.C., a Delaware Limited)
Liability Company; Cal Flats Solar)
CEI, LLC, a Delaware Limited)
Liability Company; Cal Flats Solar)
Holdco, LLC, a Delaware Limited)
Liability Company; CSI Electrical)
Contractors, Inc.; Milco National)
Constructors, Inc.; California)
Compaction Corporation; and Does 1)
through 10,)
Defendants.)

DEPOSITION OF PERSON MOST KNOWLEDGEABLE
AT CSI ELECTRICAL CONTRACTORS, INC.
JASON ALLEN MCGINLEY
TUESDAY, DECEMBER 17, 2019

Job no. 3813413
Reported by: Cathy A. Reece, RPR, CSR No. 5546
Pages 1-93

1 Q. Oh.

2 A. This is First Solar's agreement.

3 Q. Right. Well, you said yes. That's why --

4 A. I apologize.

5 Q. That's okay.

6 A. There was some language in there that was
7 very similar to our contract.

8 So, no, I've never seen this.

9 Q. Okay.

10 A. This is not something that is made public
11 to CSI.

12 Q. Next in order, 10.

13 (Exhibit 10 was marked for I.D.)

14 MR. DION-KINDEM: Let's go off the record
15 while you review that.

16 MS. NAKABAYASHI: Okay.

17 (Recess taken.)

18 MR. DION-KINDEM: This will be Exhibit 11.

19 (Exhibit 11 was marked for I.D.)

20 BY MR. DION-KINDEM:

21 Q. Did we talk about 10 yet?

22 A. No.

23 Q. Okay. You have Exhibit 10 in front of
24 you?

25 A. Yes.

1 Q. Have you ever seen this document before?

2 A. I don't know if this is the exact version
3 because it is not signed or dated. So I don't know
4 if it has been changed at all.

5 Q. But is this something that was provided to
6 CSI by First Solar?

7 A. Yes. I just don't know if it's this exact
8 document.

9 Q. Okay. Did CSI have a similar site health
10 and safety plan?

11 MS. NAKABAYASHI: Objection. Beyond the
12 scope.

13 THE WITNESS: CSI had a -- has a health
14 and safety plan, yes. I don't know if we had a site
15 specific plan for this project or not.

16 BY MR. DION-KINDEM:

17 Q. Okay. The safety plan that CSI had was
18 applicable to the California Flats Solar project?

19 MS. NAKABAYASHI: Objection. Beyond the
20 scope and calls for speculation.

21 THE WITNESS: I would speculate that it
22 is.

23 BY MR. DION-KINDEM:

24 Q. Well, don't speculate.

25 Based on your understanding --

1 A. Yes.

2 Q. -- that --

3 A. It would apply.

4 MR. DION-KINDEM: Okay. Has that been
5 produced, Counsel?

6 MS. NAKABAYASHI: I don't know. Again --

7 MR. DION-KINDEM: I don't think I've seen
8 it in the documents sent to us.

9 THE WITNESS: It's about that big.

10 BY MR. DION-KINDEM:

11 Q. Let the witness -- let the record reflect
12 that the witness is holding about eight inches
13 between his fingers.

14 MS. NAKABAYASHI: I mean, it's certainly
15 something we can meet and confer about.

16 MR. DION-KINDEM: Okay.

17 MS. NAKABAYASHI: I don't -- I can't
18 recall off the top of my head if it was requested,
19 but we can meet and confer --

20 MR. DION-KINDEM: Well, if it related to
21 this project, I'm sure it was.

22 Q. Let's turn to Exhibit 11.

23 What's your understanding of Exhibit 11?

24 A. My understanding is that this was an
25 agreement between CSI and the local union to provide

1 STATE OF CALIFORNIA)
) SS.
2 COUNTY OF LOS ANGELES)
3

4 I, CATHY A. REECE, CSR No. 5546, a
5 Certified Shorthand Reporter in and for said County
6 and State, do hereby certify:

7 That prior to being examined the witness
8 named in the foregoing deposition by me was duly
9 sworn to testify to the truth, the whole truth, and
10 nothing but the truth;

11 That said deposition was taken down by me
12 in shorthand at the time and place therein named and
13 thereafter reduced to computerized transcription
14 under my direction and supervision, and I hereby
15 certify the foregoing deposition is a full, true and
16 correct transcript of my shorthand notes so taken.

17 I further certify that I am neither
18 counsel for nor related to any party to said action
19 nor in anywise interested in the outcome thereof.

20 IN WITNESS THEREOF, I have hereunto
21 subscribed my name this 24th day of December,
22 2019.

23 
24 _____

25 CATHY A. REECE, RPR, CSR No. 5546

Exhibit 2

ATTACHMENT D SECURITY PLAN

NOTE: A detailed security plan is provided as a stand-alone document. General security measures are presented in the following sections.

1. General

The security plan is administered by the First Solar Construction department, and will detail guard responsibility, site logistics and site badging/worker identification requirements. Anyone entering or exiting the project site premises must stop at the guard station for processing, which may include badging or other form of identity verification. All individuals employed by the project site or entering the project site are required to present their badges/confirm their identity upon entry and exit of site regardless of the time of day or the frequency they enter or exit. These individuals are required to present their badges/confirm their identity at other times upon request and are responsible to have them available. Guards are required record in the Site Security Log all Visitors and Site Deliveries.

In general, guards direct all new workers to park their vehicle and report to the Safety Trailer for Site Project Orientation and badge receipt.

Guard records person's name and provides list of non-badged names instructed to report to the Safety Trailer to the Project Safety Officer to verify the individual(s) have participated in Site Project Orientation and received a badge.

2. Security Guards

Safety Wear - Guards are required to wear high visibility safety vests, hard hats, designated footwear, and safety glasses.

Site Gates - Guards are to ensure that gates are only open when vehicles are entering or exiting the site and will be closed at all other times. Only exception is manual gates which will be opened at start of work day and must be manned at all times while open and closed at end of work day.

Vehicle Inspections - Security personnel will consistently inspect any vehicle that has entered the project site upon exiting. Security is required to check back seats, back of trucks, and periodically to check trunks of cars.

Garbage Container Inspections - Site security or a Site Designee is required to periodically inspect garbage and recycling containers.

Security Patrols - Security Patrols are to be performed in a consistent manner as is prudent depending on site conditions and will be performed during inclement weather utilizing an "enclosed" vehicle provided by the site. Security patrols will utilize "check points" for validation of patrols. As part of the security patrols, guards are to inspect pad locks on site gates.

Key Removal:

First Solar Vehicles/Equipment - All First Solar unassigned vehicles and equipment keys will be removed from the equipment during non-work related hours.

Subcontractor Vehicles/Equipment - Site Security will ensure that Subcontractors are directed to remove keys from their respective equipment at the end of work shift.

Parking Placards:

Parking placards are utilized to identify vehicles w/access into the project site. A Vehicle Authorization List by Subcontractor is provided to Security Guards by the Site Security Coordinator.



3. Deliveries

Delivery Types:

- General Deliveries are vendors that regularly access the project site such as FedEx, UPS, and catering services. Regularly scheduled delivery service badges are housed at the Guard Post and are scanned in/out by the Guard.
- Material Deliveries are trucks delivering materials to the project site. The Guard scans one of the Truck Delivery badges and completes required information on the Project Site Delivery/Visitor Log. Material Deliveries must execute a Visitor Agreement as they access the project site.
 - When exiting, the Guard checks delivery truck to ensure materials have been removed, scans the associated Truck Delivery Badge and updates log.
 - Delivery times will be set by the Construction Manager. This time may change as determined by the FS Supply Chain/Logistics Representative and the Construction Manager.

4. Visitors

After determining who the visitor(s) represent (e.g. non-site First Solar, OSHA, Inspectors, ETA County, Sales, Union Representatives) along with their First Solar Point of Contact, the guard will announce the visitor to the Construction Office by radio and state the purpose for the visit.

Upon approval, by the Construction Manager or Designee, the visitor information is logged and the guard issues the visitor badge.

A visitor agreement is executed by Non-First Solar Associate Visitors prior to entering site and Witnessed by FS Designated Representative or Construction Manager.

Each visitor is advised that cameras must be checked in at the guard station. Cameras are sealed in a plastic bag at the guard station with owner information stored inside the bag. A notation is made on the log indicating the person who turned over a camera.

The guard radios the Construction Office (Site Security Coordinator or Designee) informing them that a visitor is entering site.

When exiting the work site, the guard collects the badge and completes the log. Cameras are returned to visitors. If Visitor is reoccurring (weekly) to site, they will be issued a Visitor Badge with their picture. Guards are not required to collect pictured visitor badges nightly.

Guards submit the Visitor logs along with Visitor Agreements to Project Document Controls every Monday morning for inclusion in site records.

5. Site Logistics/Inception

Site Fencing - Fencing scope commences as soon as access has been granted and will be expedited until perimeter is secure. Construction can allow other work to be delayed due to fence schedule to ensure the site is secure. Site fences are required to be 6 feet high to deter attempted theft of equipment.

Site Lighting - All project sites follow OSHA standard relative to lighting entrance ways as soon as possible after access is granted. At sites where no permitting restrictions are in place will be evaluated for area specific lighting as necessary and practical.



Exhibit 3

Agreement, Exhibit(s) and Annexes hereto (including the Scope of Work at Exhibit A, the Design Documents at Exhibit A-1, the operating plans described in Exhibit D, or any plans, specifications or other documents attached to or expressly incorporated in this Agreement or any Exhibit or sub-exhibit), all Deliverables, Applicable Laws, Permits and Industry Standards. Subcontractor shall promptly advise Contractor of the need for and location of, and shall preserve, all permanent survey construction monuments and benchmarks during its performance of the Work.

3.3 Project Manager. Within two (2) Days of Notice to Proceed, Subcontractor shall designate in writing to Contractor a project manager who shall have full responsibility for the execution of the Work and shall act as a single point of contact in all matters on behalf of Subcontractor (the "Project Manager"). Contractor reserves the right to reject the Project Manager at any time in writing to Subcontractor. Any change to the person appointed as the Project Manager by Subcontractor shall be subject to Contractor's prior written approval.

3.4 Utilities and Services. Install, connect and maintain during its performance under this Agreement all utilities, facilities and services required for the performance of the Work (including those described in Exhibit A); pay, when due, all construction utility usage charges and arrange with local authorities and utility companies having jurisdiction over the Site for the provision of such utilities and for the transition of such usage charges to the Contractor or Owner, as the case may be, upon and after Project Substantial Completion; obtain all supplies, labor, materials, consumables, construction equipment, tools, construction vehicles, other necessary equipment or services, of whatever kind or nature, required for the performance of the Work but which do not form a permanent part of the completed Work.

3.5 Inspection. Perform all design coordination, inspection, expediting, quality surveillance and other like services required for performance of the Work, including inspecting the Site, all Equipment and all other equipment, hardware and materials procured by, or delivered to Subcontractor (whether or not forming a permanent part of the completed Work or included in Subcontractor's scope of supply hereunder) that is necessary for Subcontractor to install and construct the Project in accordance with the requirements of this Agreement.

3.6 Organization. Maintain staff dedicated to the procurement and construction services required for furnishing and completion of the Work that have the technical and managerial expertise to procure, control, and execute the Work in accordance with the requirements of this Agreement. Maintain a qualified and competent organization at the Site, with adequate capacity and numbers of procurement, construction and start-up personnel, equipment, and facilities to execute the Work in a safe, environmentally sound, timely, and professional manner. Provide Contractor, for its review and approval, the names and resumes of the individuals that Subcontractor proposes as its managers and superintendents that will be located on the Site for construction (including the Project Manager). Subcontractor shall not change any such managers or superintendents without Contractor's prior written approval.

3.7 Subcontractor Permits. Obtain, maintain, and pay for all Subcontractor Permits, including any required PV installer licenses for all pertinent personnel as well as the appropriate general contractor, and specialty contractor's license(s) for the jurisdiction in which the Work is being performed. Provide, at Subcontractor's sole cost and expense, all testing, inspections and evaluations required by the applicable Governmental Authority in order to obtain and maintain Subcontractor and Contractor Permits. Provide support to Contractor free of charge by way of reasonable ministerial assistance, providing information, providing drawings, and attending meetings with permitting boards as reasonably requested by Contractor and in connection with obtaining the Contractor Permits.

3.8 Maintenance of Site. Maintain the Site clear of debris, waste material and rubbish and dispose of the same in accordance with Applicable Law. Prior to Final Completion, remove from the Site all of its waste materials and all equipment, materials, and supplies not forming a part of the permanent Plant.

3.9 Site Security and Safety. At all times while any of Subcontractor's employees, agents or Sub-subcontractors are on the Site, be solely responsible for providing them with a safe place of employment, and Subcontractor shall inspect and promptly take action to correct conditions which cause or may be reasonably expected to cause the Site to be or become an unsafe place of employment for them. Subcontractor shall take all necessary precautions for the safety and security of its employees, Sub-subcontractors, agents, owner representatives and visitors on the jobsite, prevent accidents or injury to individuals on, about, or adjacent to the Site, and take all necessary precautions to prevent loss of, injury, or damage to property at, adjacent to, or on roadways approaching the Site. Subcontractor shall fully comply with all aspects of Contractor's Environmental Health and Safety Plan (as so incorporated, the "Contractor's EHASP") in Exhibit D. If any aspects of the Work are not specifically addressed in Contractor's EHASP, Subcontractor shall develop and provide a supplemental Site-specific EHASP addressing such Work ("Subcontractor's EHASP"). Subcontractor shall submit Subcontractor's EHASP within five (5) days of the Effective Date. Submission of Subcontractor's EHASP shall not be considered a Change. Subcontractor shall ensure that Subcontractor's EHASP complies with all Applicable Laws and any Site-specific requirements. Contractor shall have five (5) days to review and comment on Subcontractor's EHASP; provided, however, that Subcontractor shall remain solely responsible for performing such Work in accordance with this Agreement. If Contractor provides Subcontractor with reasonable comments and/or revisions with respect to Subcontractor's EHASP, then Subcontractor will revise Subcontractor's EHASP to address and incorporate such, and resubmit Subcontractor's EHASP to Contractor within two (2) Business Days. Such resubmission of Subcontractor's EHASP shall not be considered a Change. Subcontractor shall perform the Work and cause its Sub-Subcontractors to perform the Work, at the Contract Price, in accordance with Contractor's EHASP and Subcontractor's EHASP (collectively, the "EHASP"), which shall be deemed incorporated into this Agreement in Exhibit D. As and when required by Owner, and at its sole cost and expense, Subcontractor shall modify Subcontractor's EHASP to conform to Owner's safety requirements. In addition, Subcontractor shall

erect and properly maintain at all times, as required by the conditions and progress of the Work, all safeguards and warnings for the protection of its employees and the general public that are reasonably prudent or required by Applicable Law. If Contractor discovers or becomes aware of any violation of or activity that is inconsistent with the EHASP or any circumstance that in Contractor's discretion is inconsistent with Subcontractor's obligation hereunder to provide a safe place of employment, and upon Contractor providing Notice thereof to Subcontractor and requesting that Subcontractor cease Work (in whole or in part as requested by Contractor), then Subcontractor shall cease Work (in whole or in part) until such time as the circumstance at issue has been resolved to Contractor's satisfaction and Contractor has provided Notice thereof. Contractor's right hereunder is not to be construed as a duty to identify safety issues with Subcontractor's Work, and there are no third party beneficiaries of this Section.

3.10 Occupational Health and Safety. Take necessary safety and other precautions to protect property and persons from damage, injury, illness, violence or harassment arising out of or in connection with the performance of the Work, wherever taking place, and shall be responsible for the compliance by all of its agents, employees and Sub-subcontractors with all Applicable Laws governing occupational health and safety.

3.11 Shipping. Arrange for timely procurement, testing, and complete shipping and handling of all Equipment necessary or advisable for completion of the Work, including inspections, expediting, quality assurance, shipping, loading, unloading, customs clearance, receiving, security, storage and claims and the receiving, unloading, handling, security and storage of all other equipment, hardware, and materials associated with the Work (whether or not forming a permanent part of the completed Work or included in Subcontractor's scope of supply hereunder) following delivery thereof to the Site in strict accordance with the applicable manufacturer's recommendations.

3.12 Quality Assurance Programs. Subcontractor shall develop, establish, document and implement appropriate checking, coordination, and other quality control procedures to assure a quality, well-developed design consistent with the requirements of this Agreement ("**Subcontractor's Quality Plan**"). Subcontractor's Quality Plan shall specifically address all aspects of Subcontractor's Work. Subcontractor shall submit Subcontractor's Quality Plan within five (5) days of the Effective Date. Submission of Subcontractor's Quality Plan shall not be considered a Change. Contractor shall have five (5) days to review and comment on Subcontractor's Quality Plan; provided, however, that Subcontractor shall remain solely responsible for performing such Work in accordance with this Agreement. If Contractor provides any comments with respect to Subcontractor's Quality Plan, then Subcontractor shall incorporate changes into Subcontractor's Quality Plan addressing such comments, and resubmit Subcontractor's Quality Plan to Contractor within two (2) Business Days. Such resubmission of Subcontractor's Quality Plan shall not be considered a Change. Upon acceptance by Contractor, Subcontractor shall perform the Work and cause its Sub-Subcontractors to perform the Work, at the Contract Price, in accordance with Subcontractor's Quality Plan, which shall be deemed incorporated into this Agreement in Exhibit D.

3.13 Access. Use only the entrance to the Site designated by Contractor from time-to-time for ingress and egress of all personnel, Equipment, and materials, supplies, and equipment of any kind.

3.14 Deliverables. Issue Deliverables for Contractor review or approval in accordance with Exhibit B. If there are procurement "hold" points on Exhibit B, Milestones in Exhibit F, or otherwise required by the Contract Documents, Subcontractor shall not proceed past the "hold" point until it has received written approval from Contractor to do so. If Contractor identifies any errors or omissions with respect to any Deliverable submitted for review, then Subcontractor shall incorporate changes into such Deliverable addressing and remedying the errors and omissions and resubmit the same to Contractor, and such incorporation of changes to address Contractor's comments shall not be considered a Change. In no event shall Contractor's review of a Deliverable constitute acceptance of any condition or other attribute of the Deliverable which is contrary to, or different from, the requirements of this Agreement.

3.15 Subcontractor Performance Security. Subcontractor shall cause the Guaranty to be provided to Contractor as of the Effective Date and to be maintained in full force and effect in accordance with the terms thereof through expiry of the Warranty Period. At Contractors' request, Subcontractor shall also provide a performance bond to be maintained in full force and effect in accordance with the terms thereof through expiry of the Warranty Period, in form and substance acceptable to Contractor in Contractor's sole discretion, in an amount equal to the Contract Price (as the same may increase from time to time). Subcontractor shall submit documentation evidencing that its surety (a) is duly authorized to provide surety services in the State of California, (b) maintains a current A.M. Best financial strength and financial size rating category of A-VII or better, and (c) is listed on the current Federal Registrar Circular 570, including evidence of assets and underwriting limitation acceptable to Contractor. If, at Contractor's request, Subcontractor provides a performance bond, then the Contract Price shall [be increased by the amount quoted by Subcontractor for such bond in Subcontractor's bid for the Work / include the cost of such bond].

3.16 Reserved.

4. COVENANTS, WARRANTIES AND REPRESENTATIONS

4.1 Subcontractor. Subcontractor represents, warrants and covenants as follows:

4.1.1 Organization, Standing and Qualification. It is an organization, duly organized, validly existing and in good standing under the laws of the State of California, and has full power and authority, and is duly licensed, to execute, deliver and perform its obligations hereunder, and is and will be duly qualified and licensed to do business and in good standing under the laws of each other jurisdiction where the failure to be so qualified would have a material adverse effect on its ability to perform its obligations hereunder. Subcontractor also warrants that it has obtained, and will in the future maintain, all Permits required by Applicable Law to perform the Work.

-9-

CA Flats 150 – Balance of Systems – CSI Electrical Contractors, Inc.

May 21, 2018

FIRST SOLAR CONFIDENTIAL INFORMATION

Exhibit 4

VALLEY FEVER FACT SHEET

California Flats Solar Project

The information in this fact sheet summarizes the most current information available from the sources listed below, and is being provided to residents within a three-mile radius of the California Flats Solar Project in Monterey County, California. Additional information about the solar project can be obtained by calling the Monterey County Resource Management Agency at (831) 755-5198.

What is Valley Fever?

Valley Fever (Coccidioidomycosis or "cocci") is an illness caused by a fungus called *Coccidioides* which lives in the soil and dirt in certain areas. The fungus usually infects the lungs causing flu-like symptoms. Most of the time symptoms get better on their own. More severe forms of the illness are rare but can be very serious and sometimes fatal.

When and where do people get Valley Fever?

Valley Fever infection can occur year-round and tends to occur in areas with dry dirt and desert-like weather conditions that allow the fungus to grow. Infection generally leads to immunity to future infections. Cases of Valley Fever have been reported from most counties in California. Over 75% of cases have been in people who live in the San Joaquin (Central) Valley. In California, the number of reported Valley Fever cases has increased greatly since 2000, with more than 4,000 cases reported in 2012. Outside of California, Valley Fever is found in some areas of Arizona, Nevada, New Mexico, Utah, and Texas, and parts of Mexico and Central and South America.

Dust suppression and respiratory protection are important control measures for reducing the risk of Valley Fever. N95 filtering facepiece respirators and/or other approved respirators will be made available by your employer to be used where dust cannot be controlled during ground disturbing activities on-site. Where possible, all earth-moving vehicles must utilize closed cabs with HEPA filtered air conditioning.

How do people get Valley Fever?

People can get Valley Fever by breathing in dust containing a form of the *Coccidioides* fungus called spores which are too small to be seen. Anyone who lives, works, or visits in an area with Valley Fever can be infected. Animals, including pets, can also be infected. Valley Fever is not contagious and cannot be spread from one person or animal to another.



Sources: California Department of Public Health; Monterey County Health Department; San Luis Obispo County Public Health Services; Mandell's Principles and Practice of Infectious Diseases, 7th ed., by John Galgiani.

VALLEY FEVER FACT SHEET

California Flats Solar Project

What are the signs and symptoms of Valley Fever?

About 60% of people infected with Valley Fever have no symptoms and will fight off the infection naturally. The people who get sick usually develop a flu-like illness 1-3 weeks after exposure to the *Coccidioides* fungus.

Those who get sick can experience some of the following symptoms:

- ♦ Fever ♦ Muscle or joint aches ♦ Unexplained weight loss ♦ Headaches
- ♦ Tiredness ♦ Cough or chest pain ♦ Rash ♦ Night sweats

These symptoms can last a month or more but most people recover fully. Most people who have been infected become immune and will not get the infection again.

More serious forms of the disease, including pneumonia and infection of the brain, joints, bone, skin, or other organs, are rare. When the infection spreads outside of the lungs, this is called disseminated Valley Fever.

Are certain people at greater risk for Valley Fever?

Anyone can get Valley Fever, even young and healthy people. People who live, work, or travel in areas with high rates of Valley Fever may be at a higher risk of getting infected than others, especially if they:

- ♦ Participate in recreational activities where dirt and soil are disturbed
- ♦ Work in jobs where dirt and soil are disturbed, including construction, farming, military work, and archaeology.
- ♦ Were not exposed as a child and now work or live in an area where Valley Fever is present.

Some groups are at greater risk for severe and disseminated Valley Fever. These include:

- ♦ Older adults (≥60 years old)
- ♦ African Americans, Filipinos, and Hispanics
- ♦ Pregnant women especially in the later stages of pregnancy
- ♦ Persons with diabetes
- ♦ Persons with conditions that weaken their immune system, such as:
 - ◊ Cancer
 - ◊ Human immunodeficiency virus (HIV) infection
 - ◊ Treatment with chemotherapy or steroids
 - ◊ Organ transplant

CA Flats Hotline 877-228-3331

Cal Flats Solar Environmental Handout

Basic Rules for Protecting Plants, Wildlife, and Habitat

- Stay within designated work areas
- Travel only on approved roadways
- Do not approach, handle, or feed wildlife, and immediately report any dead or injured wildlife
- Park only in approved areas—do not pull off the road shoulder
- **Follow posted speed limits and do not pass other vehicles**
- Do not enter Environmentally Sensitive Areas (ESAs) without appropriate approvals and monitors
- Do not enter any wetland, stream, or marsh—all wetlands are barricaded
- Do not litter, including food waste



WHY RULES

California Flats Solar LLC is committed to protecting animals and their habitat. The federal, state and local laws protecting these species and their habitats are intended to do more than prevent their extinction; the goal is to restore their populations to healthy levels.

You are personally liable for your actions and are subject to the penalties:

Violations of state and federal laws protecting threatened and endangered species can result in penalties of up to \$50,000 and/or one year in jail.



San Joaquin Kit Fox

Status: Endangered under the Federal Endangered Species Act, Threatened under the California Endangered Species Act

Habitat: Grasslands

Occurrence on the Project Site: Present in the generating facility area, access road and the utility corridor.

Description:

- Resembles a small, lanky dog
- Adults 10 to 12 inches tall
- Body about 12 inches long
- Bushy tail about 12 inches long with a distinctive black tip
- Large ears

Behavior:

- Active at night all year long
- Very inquisitive, especially about new disturbances
- Attracted by food litter
- Uses ready-made dens such as culverts and unused pipe or equipment
- Each kit fox may have many dens, commonly excavated from ground squirrels or badgers

BASIC RULES FOR KIT FOX

- Stay within designated work areas
- Always look under equipment and vehicles for SJkFs prior to moving.
- Inspect pipes, culverts or similar structures for kit fox before burying, capping, or moving.
- Do not feed SJkF, it could be harmful to you and the animals.
- Never fill or destroy a burrow – kit foxes are protected by both federal and state laws.
- Speed limit in barricaded SJkF areas is 5 mph and NO PASSING. Violation to comply will result in immediate disciplinary action.
- Never touch, kill, harass, trap or corner a SJkF.
- If a SJkF is seen within or near Project Area, notify your supervisor who will notify the Biologist(s).



California Tiger Salamander

Status: Threatened under the Federal Endangered Species Act, and California Endangered Species Act

Habitat: Seasonal wetlands, other temporary standing water.

Occurrence on the Project Site: There is only marginal habitat on any of the project components and CTS were not observed during surveys from 2012 to 2014, however were detected nearby in 2015. Therefore, it is possible that some pools or ponds in or near the project components could contain these species in wetter years.

Description:

- Large salamander, with stocky body
- Adults 7 to 8 inches long
- Adults black with yellow spots; larvae greenish-grey

Behavior:

- Adults spend most of their lives underground in burrows created by other animals.
- Adults migrate at night from upland habitats to aquatic breeding sites during the first major rainfall events of fall and early winter, and return to upland habitats after breeding.
- Eggs hatch after 10 to 14 days. The larval period last 3 to 6 months, depending on the season.

BASIC RULES FOR TIGER SLAMANDER

- Stay within designated work areas
- Prior to any ground disturbance, temporary barriers will be constructed on the project site within 0.35 mile of the identified suitable breeding habitat of the project site.
- Any defective barriers are to be reported so repairs are made. A herpetologist shall be present to monitor an activity area and handle a California tiger salamander.

On-site Waterways, Streams, Wetlands and Marshes

Status: Protected under State and Federal regulations and site permits

Rules: Avoid features and 100-foot setbacks unless expressly permitted



Additional Rare Wildlife



California red-legged frog



Golden eagle



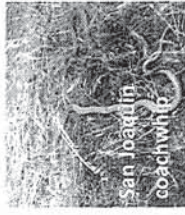
Tri-colored blackbird



Burrowing owl



Western pond turtle



San Joaquin coachwhip



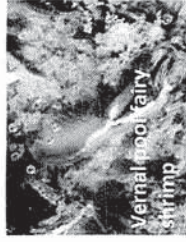
American badger



Bald eagle



Short-eared owl



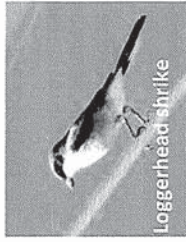
Vernal pool fairy shrimp



Western spadefoot toad



White-tailed kite



Loggerhead shrike



Mountain plover



Northern harrier

Workers are required to comply with all federal, state, and local laws, as well as permit conditions. Violation of these conditions can result in work stoppage by the regulatory agencies, including Monterey and San Luis Obispo counties.

VALLEY FEVER FACT SHEET

California Flats Solar Project

What are the options/remedies available should you be experiencing symptoms of Valley Fever?

If you think you might have Valley Fever, inform your supervisor immediately and visit your healthcare provider or occupational health clinic—your employer will provide you with the location/contact information for your local clinic. Retaliation against employees who report symptoms of Valley Fever is illegal and will not be tolerated at the California Flats Solar job site.



Since Valley Fever symptoms are similar to those of other illnesses, your provider may order a blood test or other tests, such as a chest x-ray, to help diagnose Valley Fever. Treatment is usually not necessary for mild infections, which often get better on their own. All persons with symptoms, however, should see a healthcare provider who can determine if treatment is needed.

If you are diagnosed with Valley Fever it is very important to follow instructions given by your healthcare provider about treatment, follow-up appointments, and testing.

Contact your local health department or visit the CDPH, the US Centers for Disease Control and Prevention, or the Arizona Valley Fever Center of Excellence websites for more information:

<http://www.cdph.ca.gov/HealthInfo/discond/Pages/Coccidioidomycosis.aspx>

<http://www.cdc.gov/fungal/coccidioidomycosis/>

For more information on Valley Fever, contact your doctor or:

MONTEREY COUNTY

Monterey County Health Department
Epidemiology & Surveillance Unit, Public Health Bureau
(831) 755-4698
www.mtyhd.org

SAN LUIS OBISPO COUNTY

San Luis Obispo County Public Health Department
(805) 781-5500
<http://www.slcoounty.ca.gov/health/publichealth/commndisease.htm>

Exhibit 2



PETER R. DION-KINDEM (SBN 95267)
THE DION-KINDEM LAW FIRM
PETER R. DION-KINDEM, P. C.

2945 Townsgate Road, Suite 200
Westlake Village, CA 91361
Telephone: (818) 883-4900
Email: peter@dion-kindemlaw.com

LONNIE C. BLANCHARD, III (SBN 93530)
THE BLANCHARD LAW GROUP, APC
5211 East Washington Blvd. # 2262
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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself
and all others similarly situated and as a
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;
California Flats Solar, LLC, a Delaware Limited
Liability Company; CA Flats Solar 130, LLC, a
Delaware Limited Liability Company; CA Flats
Solar 150, LLC, a Delaware Limited Liability
Company; Cal Flats Solar CEI, LLC, a Delaware
Limited Liability Company; Cal Flats Solar
Holdco, LLC, a Delaware Limited Liability
Company; CSI Electrical Contractors, Inc.; Milco
National Constructors, Inc.; California
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF
CLASS ACTION**

**Declaration of Plaintiff George Huerta in
Support of Opposition to Motion for Partial
Summary Judgment**

Date: April 8, 2021
Time: 9:00 a.m.
Crtrm: 3

1 I, George Huerta, declare:

- 2
- 3 1. I am the Plaintiff in this action. I have personal knowledge of the following facts.
- 4 2. I was employed at the California Flats Solar Project (“Solar Site”) by California Compaction for
- 5 Phase 2 as a Post Pounder starting around February of 2018 until around June of 2018. I was
- 6 then hired by Milco to work for and under the supervision of CSI for Phase 2 as a Forklift
- 7 Operator. CSI personnel supervised my daily work activities and I reported to them.

8 **NEW HIRE ORIENTATION AND WORKER MEETINGS**

- 9 3. I was told by CSI management that all workers were required to attend a new hire orientation
- 10 that was conducted by personnel from CSI. I attended one of those orientations.
- 11 4. At the Solar Site, there were also many other worker meetings that included safety meetings,
- 12 monthly all-hands meetings, and other meetings. These meetings were conducted by a
- 13 combination of personnel from CSI and other contractors.
- 14 5. At these meetings, the other workers and I were told about the Solar Site rules including the rules
- 15 of the Access Road and the rules of the mandatory security entrance and exit process at the Phase
- 16 1 and Phase 2 Security Gates.
- 17 6. At these meetings, the workers and I were told that we were required to follow all the rules of the
- 18 Solar Site. While I worked on the Solar Site, I always tried to follow the rules, and I observed
- 19 other workers following the rules.
- 20 7. The CSI management who conducted the worker meetings throughout the project included CSI
- 21 executives, safety people, general foreman, and superintendents.

22 **THE SOLAR SITE AND SECURITY GATE**

- 23 8. The Solar Site consisted of a large area of land surrounded by a fence with a Security Gate. At
- 24 first when I worked on Phase 2 of the Solar Site, we used the Phase 1 Security Gate to go
- 25 through the security process and later we used the Phase 2 Security Gate to go through the
- 26 security process.
- 27 9. During Phase 1, the Security Gate was located near the intersection of Turkey Flats Road and
- 28 Highway 41.

Declaration of Plaintiff George Huerta in Support of Opposition to Motion for Partial Summary Judgment

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10. After I started working for CSI on Phase 2 of the project, the Phase 2 Security Gate was moved closer to the parking lots to a location that was about a 10 to 15-minute drive or more from the parking lots. Prior to the creation of the Phase 2 Security Gate, the Phase 1 Security Gate was about a 30 to 45-minute drive. Sometimes the drives from the parking lots to the Phase 1 and Phase 2 Security Gates were even longer. Until the Phase 2 Security Gate was created, we used the Phase 1 Security Gate to go through the mandatory security entrance and exit process. After the Phase 2 Security Gate was created, the mandatory security entrance and exit process was moved to the Phase 2 Security Gate.
 11. When the mandatory entrance and exit security process occurred at the Phase 1 Security Gate, I was told by CSI management, by the security office, and by other management that the first place the other CSI workers and I were required to be at the beginning of the day in order to work was the Phase 1 Security Gate to line up, go through the mandatory security process and enter the Solar Site in order to begin the long drive on the Access Road to the parking lots of the Solar Site.
 12. After the Phase 2 Security Gate was created, I was told by CSI management, by the security office, and by other management that the first place the other CSI workers and I were required to be at the beginning of the day in order to work was the Phase 2 Security Gate to line up and go through the mandatory entrance security process and drive on the Access Road to the parking lots of the Solar Site. Even after the Phase 2 Security Gate was created, the Phase 1 Security Gate was not opened until a certain time in the morning, until after the sun came up, the biologist had cleared the road and the site had conducted dust control.
 13. I was told by CSI management that the Security Gates (where the mandatory security process occurred) were the only entrances to the Solar Site that we could use to enter the Solar Site. Once we entered the Solar Site, we then traveled along a long, rough, private road to get to the parking lots where we parked our vehicles.
 14. This mandatory entrance and exit security process included waiting in line for up to 5 to 20 minutes or more because the security process caused a bottlenecked, long line of worker vehicles

1 attempting to enter and exit the go through the Security Gate each day. My time waiting in line
2 in the morning would vary because a biologist would be working on the road, the sun had not
3 risen, or we workers had to wait for the biologist to clear the road, which added to the time spent
4 waiting in line. The wait to exit the Solar Site normally took longer because virtually all the
5 workers on the Solar Site were attempting to leave at the same time. This created a long line and
6 a lot of waiting time.

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8 15. From the time that the other CSI workers and I entered through the Phase 1 or Phase 2 Security
9 Gates at the beginning of the day through the time that we left the Solar Site through the Phase 1
10 or Phase 2 Security Gate at the end of the day, we were subject to a broad range of job Solar Site
11 rules and restrictions and were monitored for our compliance with such rules and restrictions.
12 During this time, the other CSI workers and I could not effectively use this time for our own
13 purposes.

14 16. I was not paid for the time it took me to wait in the long line of vehicles and pass through the
15 security process at the Phase 1 Security Gate or the Phase 2 Security Gate to enter and exit the
16 Solar Site each day.

17 **THE MANDATORY SECURITY ENTRANCE AND EXIT PROCESS**

18 17. To work on the Solar Site, the first place the other workers and I were required to be was at the
19 Security Gate where the mandatory security process occurred where we were required to go
20 through a security process which required us to be security checked and scanned in with our
21 security badges.

22 18. The worker security badges that were part of the mandatory security entrance and exit process
23 contained the picture and name of the worker and the company name on them.

24 19. At my new hire orientation and at CSI meetings, I was told by CSI management that CSI's
25 workers and I could not go beyond the Security Gate where the mandatory security process
26 occurred without our security badges and without being scanned in or scanned out through the
27 mandatory security process.
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20. At my new hire orientation and at CSI meetings, I was told by CSI management that once we passed through the Security Gate where the mandatory security occurred, we always had to have our badges on us until we exited the Security Gate at the end of the day and were scanned out through the mandatory security exit process. I was told that if a worker forgot or lost his or her security badge, the worker could not pass through the Security Gate without special permission.
21. At the Security Gate where the mandatory security process occurred, there was normally one and sometimes two security guards who conducted the mandatory security entrance process. To conduct the mandatory entrance and exit security process, the security guard or guards would stop each vehicle to check for security badges of the passengers. For both entering and exiting the Solar Site, when there were two security guards inspecting and scanning in security badges, the security guards would each stand on a side of the vehicle to inspect and scan in security badges. At other times, one security guard would stay in the guard shack while the other security guard inspected the vehicles and scanned the security badges alone.
22. For both entering and exiting, the security guards required each vehicle to stop at the Security Gate where the mandatory security process occurred so that each passenger could be checked. The passengers in the vehicles would roll down their windows and hand the security badges to the security guard for inspection and scanning. The number of security badges was required to match the number of passengers in each vehicle. The security guards would then scan each worker's security badge in each vehicle before letting them pass through the Security Gate. The mandatory security entrance process was conducted one vehicle at a time using the same procedure.
23. For both entering and exiting the Solar Site, sometimes the drivers would present all the badges to the security guard at once and other times they did not. The security guards would go to each window of the vehicle where the passengers were sitting and inspect and scan their security badges. Each security badge was inspected and scanned individually by the security guards.
24. For both entering and exiting the Solar Site, if passengers in a vehicle did not have security badges, the security guards would pull the vehicle out of line, would make the vehicle park on

- 1 the side of the road, and would require any passengers who did not have their scan-in badges to
2 go into the guard shack to be cleared to enter or exit through the Security Gate. If workers lost
3 their badges and needed replacement badges, the workers were required to check in at the
4 security guard shack every day and had to sign in or sign out at the guard shack or get a
5 temporary badge until they replaced the lost badges. Once any passengers who did not have
6 security badges were cleared to pass through the Security Gate, the vehicle was allowed to get
7 back in line, pass through the Security Gate, and proceed on the Access Road to the parking lots.
- 8 25. The same kind of long, bottlenecked line of vehicles also occurred on the way out of the Security
9 Gate where the mandatory security process occurred at the end of the day. This mandatory exit
10 security process included waiting in line, which could take up to anywhere between 5 to 20
11 minutes or more because of the Security Gate's bottlenecked configuration and long line of the
12 workers attempting to leave at the end of the day, and the inspection and scanning of employees'
13 badges by the security guards.
- 14 26. I was told by CSI management that as part of the security entrance and exit process, the security
15 guards had the right to look inside and search any worker vehicle at any time.
- 16 27. I drove a pick-up truck and I observed that the security guards would look at the bed of my truck
17 to make sure there were no tools or anything else improper in there.
- 18 28. I was told by CSI management that the main reason that the Solar Site would search vehicles at
19 the Security Gates during the exit security process was because they did not want workers to
20 steal tools. I was also told that some people took kit foxes or endangered species home, so they
21 were also checking for that as well.
- 22 29. At least once, I forgot my security identification badge during the entrance security process and,
23 when I did, I had to stop at the security guard shack and sign in to get a temporary badge.
- 24 30. There was always a long line of line of vehicles waiting to go through the Security Gate,
25 including buses, in the morning.
- 26 31. During the time that I was waiting in the long lines to go through the security process to enter
27 and exit the Solar Site and going through all the steps of the security process to enter and exit the
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1 Security Gate, I believed that I was, and actually was, restricted by, confined by, and under the
2 control of CSI. During these periods of time, I was confined to the Solar Site and to the vehicle
3 in which I was riding in and could not run errands outside of the Solar Site, could not go
4 somewhere to get something to eat, and could not do other things that I could normally do if I
5 were not restricted by, confined by, and controlled by the long lines and security process to enter
6 and exit the Solar Site.

7 **RULES ABOUT NOT BEING ON THE SOLAR SITE BEFORE SUNRISE AND UNTIL THE**
8 **BIOLOGISTS CLEARED THE SOLAR SITE**

- 9 32. We workers could not enter the Solar Site and drive on the Access Road until the Solar Site was
10 opened by the security guards. We were told by CSI management at CSI worker meetings the
11 time at which the Solar Site was scheduled to open and were periodically updated about any
12 changes to the scheduled opening times. We were told that we were not allowed to enter the
13 Solar Site until the sun had come up and the biologists had cleared the Solar Site to be opened
14 and had added barricades if endangered species were near the roadway or wait for the water
15 trucks to wet the roadway for dust control.
- 16 33. Although CSI and Solar Site management personnel gave workers a scheduled time when we
17 could enter the Solar Site, the time that it actually opened varied throughout the year. There were
18 times when the Solar Site did not open on time and we were required to wait in our vehicles until
19 it opened. As a result, other workers and I sometimes waited in our vehicles for approximately
20 10 minutes or more for the sun to come up, for the biologists to clear the Solar Site to be opened,
21 and for the Phase 1 Security Gate to be opened.

22 **THE ACCESS ROAD**

- 23 34. I was told by CSI management that they wanted all workers to drive vehicles on the Access
24 Road.
- 25 35. There was no possible way to walk or ride a bicycle from the Security Gate (where the
26 mandatory security process occurred at the time) to the parking lots in the morning and get to
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1 work on time or to get from the parking lots to the Security Gates on time at the end of the day
2 because workers were restricted as to when we were allowed to be on the Solar Site.

3 36. CSI and Solar Site management told us that they were going to monitor us while we were driving
4 on the Access Road.

5 37. I was told by CSI management at CSI worker meetings that from the time that when we workers
6 went through the Security Gate (where the mandatory security process occurred at the time) in
7 the morning until we went out of them at the end of the workday, we were subject to all the Solar
8 Site's rules, including the rules relating to the Access Road, and could be suspended or
9 terminated for violating them and that all workers were going to watch us carefully while we
10 were on the Solar Site and the Access Road.

11 38. I was also told about specific "rules of the road" that applied to the Access Road. These rules
12 were in addition to signs that were posted before and after we went through the mandatory
13 security entrance process and entered the Solar Site through the Security Gate (where the
14 mandatory security process occurred at the time).

15 39. At my new hire orientation and at worker meetings, we were told by CSI management that we
16 were subject to having our bodies, personal property and vehicles searched by CSI and other
17 Solar Site management at any time while inside the Security Gates or on the Access Road. We
18 were also told that we were subject to drug and alcohol testing at any time while inside the
19 Security Gates or on the Access Road.

20 40. From the time that I entered the Security Gate where the mandatory security process occurred in
21 the morning until I exited the Security Gate at the end of the day, while I was on the Access
22 Road, I believed that I was, and actually was, under the control of CSI because of the job Solar
23 Site rules that we were subject to, because of how much CSI warned us about them, and how the
24 rules were being enforced. I could also not leave the Solar Site without going through the
25 mandatory security exit process.

26 41. There were many rules that we were told by CSI and Solar Site management that we had to
27 follow, including safety and personal protective equipment rules, discrimination rules, anti-
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1 harassment rules, environmental rules, alcohol and drug policies, rules related to being subject to
2 searches for alcohol, drugs and other things, no smoking, no practical jokes, no horseplay rules,
3 no gambling rules, no photography, no loud music and other rules.

4 **SIGNS ON THE ACCESS ROAD AND AT THE SECURITY GATE ENTRANCE**

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6 42. There were signs along the Access Road as well as at and around the Security Gates displaying
7 numerous instructions. At my new hire orientation and at worker meetings, we were told by CSI
8 management that we had to obey the instructions on the signs of the Solar Site. I recall that these
9 instructions, among other things, included things like:

- 10 • be prepared to wear PPE (Personal Protective Equipment) beyond this point;
- 11 • all visitors must check in at the guard shack;
- 12 • must have badge;
- 13 • speed limit;
- 14 • pictures of animals that I was told to look out for and not to interfere with;
- 15 • no smoking;
- 16 • no drugs; and
- 17 • no firearms.

18 43. At my new hire orientation and at worker meetings, we were told by CSI management that we
19 were required to wear our PPE (Personal Protective Equipment) at all times when we were on the
20 Solar Site, including from the time that we entered the Security Gates in the morning until the
21 time that we left the Security Gates at the end of the day.

22 **RULES ABOUT SPEEDING ON THE ACCESS ROAD**

23 44. I recall that there were speed limits signs with speed limits between 5 and 20 miles per hour
24 posted on the Access Road.

25 45. At my new hire orientation and at worker meetings, we were told by CSI management that they
26 were monitoring our activities and the speeds of vehicles on the Access Road. We were told that
27 if we violated the speed limits or “rules of the road” or other job Solar Site rules, we could be
28 suspended or terminated.

1 46. At times on the Access Road, I was often only allowed to drive at 5 to 10 miles per hour because
2 of animals near the road, the conditions of the road, cattle grids, the road being wet because of
3 the Solar Site watering of the road, poor road conditions and other reasons.

4 **RULES ABOUT PASSING ON THE ROAD**

5 47. During our drive on the Access Road, gaps would form between cars for any number of reasons
6 such as animals on the road, someone's car breaking down, someone driving more slowly than
7 the rest of the cars, or a whole range of the conditions related to the road. Regardless of these
8 gaps, we were told by CSI management that we were not allowed to go above the speed limit or
9 pass another moving vehicle for any reason, except when a car had broken down or pulled over
10 to the side of the road.

11 **RULES ABOUT LIVESTOCK AND ENDANGERED ANIMALS ON THE ACCESS ROAD**

12 48. The Access Road was a long, rough dirt road that was very difficult to drive on and very hard on
13 vehicles. Along the Access Road, there were several steel cattle grids that we were required to
14 drive over. Cattle grazed along the Access Road and would frequently be very near or on the
15 road and they interfered with the ability of vehicles to travel on the road.

16 49. At the new hire orientation and at worker meetings, we were told by CSI management that we
17 were not allowed to disturb the cattle or local wildlife in any way while we were driving on the
18 Access Road. We were told that if we saw animals on or near the Access Road, we had to let
19 them do whatever they needed to do and that we were not allowed to do anything to try to get
20 them to move off the Access Road. We were told that we had to slow down or stop our vehicle
21 and just stay in our vehicles and wait for them to move away from the road. We were told that
22 we mainly had to be careful about cattle and kit foxes, but there were also other animals that we
23 were supposed to watch out for. The presence of animals on or around the road frequently
24 slowed down the drive on the Access Road. Often, the biologists would post signs for kit fox
25 zones on the road and required traffic to slow down to 5 miles per hour in the zones. We were
26 told that we were not supposed to touch or feed anything to the local wildlife or cattle on the
27 Solar Site or along the Access Road.
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50. At the new hire orientation and at worker meetings, we were told by CSI management that we were not supposed to honk our horns when we were driving on the Access Road because our horns could disturb the local wildlife and the cattle. We were also told that we could not play loud music that could be heard outside our vehicle while we were on the Access Road because the noise from the music could also disturb the local wildlife and the cattle.

51. Workers were also told that they could not wear ear buds or ear pods while driving on the Access Road.

RULES ABOUT CREATING DUST ON THE ACCESS ROAD

52. At the new hire orientation and at worker meetings, we were told by CSI management that there were dust control rules related to the Solar Site that required the workers not to create too much dust. We were told that we could not drive on the Access Road in a way that created dust and that we needed to drive slowly if dust was being created. We were told that if we were creating dust, we were driving too fast. We were told that the Solar Site had water trucks that would spray water on the Access Road to prevent too much dust from being created by the vehicles that were driving on it. Because of this watering, the Access Road was sometimes muddy and slippery. When it was muddy and slippery, we had to drive even more slowly because it was more difficult to drive on the Access Road.

RULES ABOUT SMOKING

53. We were told that we were not allowed to smoke outside of our vehicles while we were driving on the Solar Site or Access Road or inside or outside of our vehicles in the parking lots. We were told that we could only smoke in designated smoking areas.

RULES ABOUT STAYING ON THE ACCESS ROAD

54. At my new hire orientation and at crew meetings, we were told by CSI management that once we were released to drive on the Access Road in the morning and at the end of the day, we had to drive directly on the Access Road to our assigned parking lot in the morning and from our assigned parking lot back to the Security Gates at the end of the day and that we were to stay

1 only on the Access Road. We were told that although there were other intersecting roads along
2 the Access Road, we were not permitted to go onto any of those roads.

3 **RULES ABOUT STOPPING ON THE ACCESS ROAD**

4 55. At my new hire orientation and in worker meetings, we were told by CSI management that we
5 must strictly follow the “rules of the road” and keep the flow of traffic constantly moving on the
6 Access Road. We were told that except for emergencies, we were not allowed to stop on the
7 Access Road at any places that we were not specifically designated to stop at.

8 56. At my new hire orientation and at worker meetings, we were told by CSI management that if we
9 had to get out of our vehicles for any reason, we were not allowed to go outside of the boundary
10 fences, stakes and ribbons that ran about 15 feet or so along the sides of the Access Road. We
11 were told that if we had to get out of our vehicles along the Access Road for any reason, we
12 could not disturb the environment, such as trampling or disturbing any plants.

13 **WORKERS WERE CONTROLLED BY CSI WHILE ON THE ACCESS ROAD**

14 57. After going through the mandatory security entrance process at the Security Gate in the morning
15 and while driving on the Access Road to the parking lots and while driving on the Access Road
16 at the end of the day, we workers were restricted by, confined by, and under the control of CSI.
17 During this time while we were driving on the Access Road, we were confined to the Solar Site
18 and to the vehicle in which we were riding and could not use the time effectively for our own
19 purposes, such as running errands or getting something to eat, or doing other things that we could
20 normally do outside the Solar Site.

21 58. I was not paid for the drive time on the Access Road or between the Security Gate (where the
22 mandatory security process occurred at the time) and the parking lots.

23 **THE MANDATORY SECURITY EXIT PROCESS**

24 59. I was told at the Solar Site Orientation and in meetings that at the end of each workday after our
25 work stop time, it was CSI’s policy that to exit the Solar Site, all workers had to drive to the
26 Security Gate where the mandatory security process occurred on the Access Road and wait for
27 their turn to go through the exit security process at the Security Gate. We were told that when we
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1 were traveling from the parking lots to the Security Gates at the end of the day, we could not
2 pass other vehicles and had to wait in line for our turn to go through the exit security process,
3 vehicle-by-vehicle, at the Security Gate. We were told that when a vehicle got to the front of the
4 line at the Security Gate where the mandatory security process occurred at the end of the day, the
5 vehicle needed to stop at the Security Gate and wait until a security guard conducted the exit
6 security process. We were told that we were required to roll down our windows and present our
7 security identification badges for review and scanning by a security guard. We were told that all
8 drivers and passengers in a vehicle had to do the same thing. We were told we workers were not
9 allowed to leave the Solar Site until we completed the exit security process at the Security Gate
10 and the security guards allowed us to leave the Solar Site.

11 60. I was told at the Solar Site Orientation and in meetings that, if a worker did not have his or her
12 security identification badge at the time that he or she wanted to exit the Solar Site through the
13 Security Gate where the mandatory security process occurred, the worker could not exit the Solar
14 Site and had to pull out of line and go into the security guard shack at the Security Gate to be
15 released before being allowed to exit the Solar Site.

16 61. As I was going through the exit security process, I could see security guards looking inside my
17 vehicle and other vehicles through the windows. They also inspected the bed of my pickup if I
18 were driving a pickup. When I was riding with other people and when I saw other vehicles with
19 more than one person, I saw the security guards looking into the vehicles to see how many
20 people were in the vehicles and confirming that the identification badges matched the people in
21 the vehicles.

22 62. At the end of the day, the line waiting to get out of the Solar Site at the Security Gate where the
23 mandatory security process occurred was even longer than the line at the Security Gate at the
24 beginning of the day. This is because at the end of the day, hundreds of Solar Site workers would
25 be leaving at around the same time. The work stopping time for virtually all the CSI workers was
26 the same and we were required to be off the Solar Site by a certain time. I observed and estimate
27 that there were 50 or more vehicles leaving the Solar Site around the same time each workday.
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1 Because of the number of vehicles leaving at once and because of the configuration of the
2 Security Gate, the time it took me to wait in line and go through the exit security process could
3 be 30 minutes or more depending on where my vehicle was in line to exit. Waiting in line to exit
4 the Solar Site was part of the exit security process every day.

5 63. I estimate that the security exit process could take up to a minute or more per vehicle after we
6 finished waiting in the long line.

7 64. At the Solar Site Orientation and in meetings, I was told that it was CSI's policy that any
8 workers who arrived at the Security Gate where the mandatory security process occurred and
9 attempted to exit too early at the end of the workday could be disciplined or terminated. I was
10 also told this by CSI management. For example, regarding the Phase I Security Gate, I was told
11 that management had a time approximation of how long it took to get out. Management believed
12 it took 40 minutes to get to that Security Gate, so if you got there 35 minutes or in a half an hour,
13 they would give you a warning and say you were speeding because you got there too early and, if
14 it happened again, management would fire you.

15 65. While I worked for CSI, I was told that certain workers did in fact arrive at the Security Gate
16 where the mandatory security process occurred at the end of the workday and attempted to exit
17 the Security Gate too early and were terminated.

18 66. During the time that I was waiting in line to exit the Security Gate where the mandatory security
19 process occurred and while I was going through the exit security process, I felt that I was, and
20 actually was, under CSI's control because I was confined to and could not leave the Solar Site
21 until I went through the exit security process and I was required to follow policies, processes and
22 rules required by CSI to exit through the Security Gate. Also, after I got in line to go through the
23 Security Gate and while I was going through the exit security process, there was nothing I could
24 do other than wait in the vehicle in which I was riding to complete the security process and could
25 not use the time effectively for my own purposes. For example, I could not do any of the
26 following things: a) I could not pass any vehicles ahead of me, b) I could not leave the Solar Site,
27 c) I could not run any personal errands, d) I could not leave to get something to eat, e) I could not
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1 perform any personal activities outside of my vehicle, f) I could not move my vehicle until the
2 security guards had let vehicles ahead of me, vehicle-by-vehicle, exit the Solar Site.

3 **MEAL BREAK LOCATION RULES**

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5 67. I was also told by CSI management at worker meetings that CSI workers were required to stay
6 on the job Solar Site during the entire workday from the beginning of the workday to the end of
7 the workday. I was told that workers were required to stay at our daily Installation Sites
8 (including the assigned lunch area at the Installation Sites) during our meal periods.

9 68. We were told that we workers were required to eat our lunches at our daily Installation Solar
10 Sites. I followed those instructions during meal periods and observed other CSI workers follow
11 those instructions during meal periods.

12 69. I was never paid for the time that I was on meal breaks.

13 I declare under penalty of perjury under the laws of California and the United States that
14 foregoing is true and correct.

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16 Dated: March 18, 2021

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George Huerta

Exhibit 3



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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself
and all others similarly situated and as a
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;
California Flats Solar, LLC, a Delaware Limited
Liability Company; CA Flats Solar 130, LLC, a
Delaware Limited Liability Company; CA Flats
Solar 150, LLC, a Delaware Limited Liability
Company; Cal Flats Solar CEI, LLC, a Delaware
Limited Liability Company; Cal Flats Solar
Holdco, LLC, a Delaware Limited Liability
Company; CSI Electrical Contractors, Inc.; Milco
National Constructors, Inc.; California
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF
CLASS ACTION**

**Declaration of Kevin Clarno in Support of
Opposition to Motion for Partial Summary
Judgment**

Date: April 8, 2021
Time: 9:00 a.m.
Crtrm: 3

1 I, Kevin Clarno, declare:

- 2
- 3 1. I have personal knowledge of the following facts.
- 4 2. I was employed at the California Flats Solar Project (“Solar Site”) by Sachs Electric Company
- 5 (“Sachs”) in Phase 1. I was then hired by CSI for Phase 2 for about 3 months.

6 **NEW HIRE ORIENTATION AND WORKER MEETINGS**

- 7 3. I was told by CSI management that all workers were required to attend a new hire orientation
- 8 that was conducted by personnel from CSI. I attended one of those orientations.
- 9 4. At the Solar Site, there were also many other worker meetings that included safety meetings,
- 10 monthly all-hands meetings, and other meetings. These meetings were conducted by a
- 11 combination of personnel from CSI and other contractors.
- 12 5. At these meetings, the other workers and I were told about the Solar Site rules including the rules
- 13 of the Access Road and the rules of the mandatory security entrance and exit process at the Phase
- 14 2 Security Gate.
- 15 6. At orientation and in meetings, the workers and I were told that we were required to follow all
- 16 the rules of the Solar Site. While I worked on the Solar Site, I always tried to follow the rules and
- 17 I observed other workers following the rules.
- 18 7. The CSI management people who conducted the worker meetings throughout the project
- 19 included CSI executives, safety people, general foreman, and superintendents.

20 **THE SOLAR SITE AND SECURITY GATE**

- 21 8. The Solar Site consisted of a large area of land surrounded by a fence with a Security Gate.
- 22 During Phase 1, the Security Gate was located near the intersection of Turkey Flats Road and
- 23 Highway 41. During the time that I worked for CSI on Phase 2 of the project, the Phase 2
- 24 Security Gate had been moved from the previous Phase 1 location and was about a 10-minute
- 25 drive from the parking lots. Prior to the creation of the Phase 2 Security Gate, the Phase 1
- 26 Security Gate was about a 30 to 45-minute drive. Sometimes the drives from the parking lots to
- 27 the Phase 1 and Phase 2 Security Gates were even longer.
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9. I was told by CSI management during my orientation for Phase 2 that the first place the other CSI workers and I were required to be at the beginning of the day in order to work was the Phase 2 Security Gate to line up and go through the mandatory entrance security process and drive on the Access Road to the parking lots of the Solar Site

10. I was told by CSI management during my orientation that the Phase 2 Security Gate was the only entrance to the Solar Site that we could use to work on the Solar Site. After we passed through the Phase 2 Security Gate, we then traveled along a long, rough, private road to get to the parking lots where we parked our vehicles.

11. This mandatory entrance and exit security process at the Phase 2 Security Gate included waiting in line for up to 20 minutes because the Security Gate configuration and the security process caused a bottlenecked, long line of worker vehicles attempting to enter and exit the Solar Site each day. The wait to exit the Solar Site through the Phase 2 Security Gate normally took longer because virtually all of the workers on the Solar Site were attempting to leave at the same time. This created a long line and a lot of waiting time.

12. From the time that the other CSI workers and I entered through the Phase 2 Security Gate at the beginning of the day through the time that we left the Solar Site through the Phase 2 Security Gate at the end of the day, we were subject to a broad range of job Solar Site rules and restrictions and were monitored for our compliance with such rules and restrictions. During this time, the other CSI workers and I could not effectively use this time for our own purposes.

13. I was not paid for the time it took me to wait in the long line of vehicles and pass through the security process at the Phase 2 Security Gate to enter and exit the Solar Site each day during my time on Phase 2.

THE MANDATORY SECURITY ENTRANCE AND EXIT PROCESS

14. To work at the Solar Site, the first place the other CSI workers and I were required to be at the beginning of the day in order to work was the Phase 2 Security Gate to line up and go through the mandatory entrance security process and drive on the Access Road to the parking lots of the Solar Site.

- 1 15. The worker security badges that were part of the mandatory security entrance and exit process
2 contained the worker's picture, name, company, and a bar code ID for scanning.
- 3 16. At my new hire orientation and at CSI meetings, I was told by CSI management that we workers
4 could not go beyond the Phase 2 Security Gate where we scanned in and out without our security
5 badges and without being scanned in or scanned out through the mandatory security process. I
6 was told that if a worker forgot or lost his or her security badge, the worker could not enter the
7 Solar Site without special permission.
- 8 17. At my new hire orientation and at CSI meetings, I was told by CSI management that once we
9 entered the Solar Site through the Phase 2 Security Gate where we scanned in and out, we always
10 had to have our badges so at the end of the day we could be scanned out through the mandatory
11 security exit process.
- 12 18. At the Phase 2 Security Gate where we scanned in and out, there was normally one and
13 sometimes two security guards who conducted the mandatory security entrance process for us
14 workers and our vehicles. Almost all the time, there was only one lane of traffic being processed
15 by the security guard to enter or exist the Solar Site.
- 16 19. To conduct the mandatory entrance and exit security process, the security guard or guards would
17 stop each vehicle to check for security badges of the passengers or check for other information if
18 the vehicle was a vendor vehicle. For both entering and exiting the Solar Site, when there were
19 two security guards inspecting and scanning in security badges, the security guards would each
20 stand on a side of the vehicle to inspect and scan in security badges. The passengers in the
21 vehicles would roll down their windows and hand the security badges to the security guard for
22 inspection and scanning. The number of security badges in each vehicle was required to match
23 the number of passengers in each vehicle. The security guards would then scan each worker's
24 security badge in each vehicle before letting them pass through the Phase 2 Security Gate.
- 25 20. At the Phase 2 Security Gate, there was always a long, bottlenecked line of vehicles waiting to
26 enter. The mandatory security entrance process was conducted one vehicle at a time using the
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1 same procedure. In the morning, there were worker vehicles and buses waiting in line to go
2 through the Phase 2 Security Gate.

- 3 21. For both entering and exiting the Solar Site, sometimes the drivers would present all of the
4 badges to the security guard at once. Other times they did not, and the security guards would go
5 to each window of the vehicle where the passengers were sitting and inspect and scan their
6 security badges. Each security badge was inspected and scanned individually by the security
7 guards.
- 8 22. For both entering and exiting the Solar Site through the Security Gate where the security process
9 occurred, if passengers in a vehicle did not have security badges, the security guards would pull
10 the vehicle out of line, would make the vehicle park on the side of the road, and would require
11 any passengers who did not have their scan-in badges to go into the guard shack to be cleared to
12 enter or exit the Solar Site. Sometimes, the security guard would call a foreman and ask him to
13 come down to the Security Gate and clear you.
- 14 23. Once any passengers who did not have security badges were cleared to pass through the Security
15 Gate and received a visitor's badge, the vehicle was allowed to get back in line and proceed on
16 the Access Road.
- 17 24. The same kind of long, bottlenecked line of vehicles also occurred on the way out of the Phase 2
18 Security Gate (where the security process occurred) at the end of the day. This mandatory exit
19 security process included waiting in line, which could take up to anywhere between 20 minutes
20 or more because of the Security Gate's bottlenecked configuration and long line of the workers
21 attempting to leave the Solar Site at the end of the day and the inspection and scanning of
22 employees' badges by the security guards. My time in line depended on where my place in line
23 was and other factors – for example, if there were cattle in the middle of the road. We workers
24 were told by CSI management that we could not force the cattle off the road and had to wait for
25 the cattle to pass.
- 26 25. I was told by CSI management at my orientation that as part of the security entrance and exit
27 process, the security guards had the right to look inside and search any worker vehicle at any
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1 time. There was also a sign on the Solar Site that said any vehicle on their property is subject to
2 search and seizure. I was told by CSI management that the security guard had the discretion to
3 determine which workers to search at the Security Gate.

- 4 26. During the time that I was waiting in the lines to go through the security process to exit the Solar
5 Site and going through all the steps of the security process to exit the Solar Site, I believed that I
6 was, and actually was, restricted by, confined by, and under the control of CSI. During these
7 periods of time, I was confined to the Solar Site and to the vehicle in which I was riding and
8 could not run errands outside of the Solar Site, could not go somewhere to get something to eat,
9 and could not do other things that I could normally do if I were not restricted by, confined by or
10 controlled by the long lines and security process to exit the Solar Site.

11 **RULES ABOUT NOT BEING ON THE SOLAR SITE BEFORE SUNRISE AND UNTIL THE**
12 **BIOLOGISTS CLEARED THE SOLAR SITE**

- 13 27. We were told the time at which the Solar Site was scheduled to open and were periodically
14 updated about any changes to the scheduled opening times. We were told that we were not
15 allowed to enter the Solar Site until the sun had come up and the biologists had cleared the Solar
16 Site to be opened and had added barricades if endangered species were near the roadway or wait
17 for the water trucks to wet the roadway for dust control. We would then proceed to the Phase 2
18 Security Gate where the security and badging process took place.

19 **THE ACCESS ROAD**

- 20 28. I was told by CSI management that they wanted all workers to drive vehicles on the Access
21 Road.
22 29. There was no possible way to walk or ride a bicycle from the Phase 2 Security Gate to the
23 parking lots in the morning and get to work on time or to get from the parking lots to the Security
24 Gate on time at the end of the day because workers were restricted as to when we were allowed
25 to be on the Solar Site.
26 30. Solar Site management also monitored us while we were driving on the Access Road. I
27 remember seeing CSI personnel on the Access Road who were monitoring the behavior of
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1 workers while they were driving on the road. I also observed speed monitors, both a speed
2 monitor and security guards with a radar gun, alongside the road, especially near kitfox dens, and
3 environmentalist patrolling the road.

- 4 31. I was told by CSI personnel at my orientation that from the time that we workers went through
5 the Phase 2 Security Gate in the morning until we went out of them at the end of the workday,
6 we were subject to all the Solar Site's rules, including the rules relating to the Access Road, and
7 could be suspended or terminated for violating them and that all workers were being watched
8 carefully while we were on the Solar Site and the Access Road
- 9 32. I was also told about specific "rules of the road" that applied to the Access Road. These rules
10 were in addition to signs that were posted before and after we went through the mandatory
11 security entrance process and went through the Phase 2 Security Gate. As problems would arise,
12 the foreman would reiterate certain rules the morning after. For example, if someone was caught
13 speeding, the speeding would be reiterated in the morning meeting the day after.
- 14 33. At my new hire orientation, we were told by CSI management that we were subject to having our
15 bodies, personal property and vehicle searched by CSI and other Solar Site management at any
16 time while inside the Phase 2 Security Gate or on the Access Road. We were also told that we
17 were subject to drug and alcohol testing at any time while inside the Security Gates or on the
18 Access Road.
- 19 34. From the time that I entered the Phase 2 Security Gate in the morning until I exited the Security
20 Gates at the end of the day, I believed that I was under the control of CSI because of the job
21 Solar Site rules that we were subject to, because of how much CSI warned us about them and
22 how the rules were being enforced.
- 23 35. There were many rules that we were told by CSI and Solar Site management that we had to
24 follow, including those discussed below.

25 **INSTRUCTION SIGNS**

- 26 36. There were signs along the Turkey Flats road and around the Security Gates displaying a number
27 of instructions. At my new hire orientation and at worker meetings, we were told by CSI
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1 management that we had to obey the instructions on the signs of the Solar Site. I recall that these
2 instructions, among other things, included things like:

- 3 • all visitors must check in at the guard shack;
- 4 • must have badge;
- 5 • speed limit;
- 6 • pictures of animals that I was told to look out for and not to interfere with;
- 7 • no smoking;
- 8 • no drugs; and
- 9 • no firearms.

10 37. At my new hire orientation and at worker meetings, we were told by CSI management that we
11 were required to wear our PPE (Personal Protective Equipment) at all times when we were on the
12 Solar Site, including from the time that we entered the Phase 2 Security Gate in the morning until
13 the time that we left the Security Gate at the end of the day.

14 **RULES ABOUT SPEEDING ON THE ACCESS ROAD**

15 38. I recall that there were speed limit signs with speed limits between 5 and 20 miles per hour
16 posted on the Access Road. At my new hire orientation and at worker meetings, we were told by
17 CSI management that they were monitoring our activities and the speeds of vehicles on the
18 Access Road. We were told that there were speed radar machines and cameras installed along the
19 Access Road. At least one of these radar machines was located on the Access Road and had a
20 digital sign that would tell us how fast we were going. I also saw people using hand-held radar
21 machines to monitor the speed of workers. We were told that if we violated the speed limits or
22 “rules of the road” or other job Solar Site rules, we could be suspended or terminated.

23 39. At times on the Access Road, I was often only allowed to drive at 5 miles per hour because of
24 animals near the road, the conditions of the road, cattle grids, the road being wet because of the
25 Solar Site watering of the road, poor road conditions and other reasons. We were told that if we
26 violated any rule around environmental signs we would immediately get fired.

RULES ABOUT PASSING ON THE ROAD

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2 40. During our drive on the Access Road, gaps would form between cars for any number of reasons
3 such as animals on the road, someone’s car breaking down, someone driving more slowly than
4 the rest of the cars, or a whole range of the conditions related to the road. Regardless of these
5 gaps, we were told by CSI management that we were not allowed to go above the speed limit or
6 pass another moving vehicle for any reason, except when a car had broken down or pulled over
7 to the side of the road.

8 **RULES ABOUT LIVESTOCK AND ENDANGERED ANIMALS ON THE ACCESS ROAD**

9 41. The Access Road was a long, rough dirt road that was very difficult to drive on and very hard on
10 vehicles. Along the Access Road, there were several steel cattle grids that we were required to
11 drive over. Cattle grazed along the Access Road and would frequently be very near or on the
12 road and they interfered with the ability of vehicles to travel on the road.

13 42. At the new hire orientation and at worker meetings, we were told by CSI management that we
14 were not allowed to disturb the cattle or local wildlife in any way while we were driving on the
15 Access Road. We were told that if we saw animals on or near the road, we had to let them do
16 whatever they needed to do and that we were not allowed to do anything to try to get them to
17 move off the road, such as honk our car horns. We were told that we had to slow down or stop
18 our vehicle and just stay in our vehicles and wait for them to go away from the road. We were
19 told that we mainly had to be careful about cattle and kit foxes, but there were also other animals
20 that we were supposed to watch out for. The presence of animals on or around the road
21 frequently slowed down the drive on the Access Road. Often, the environmentalist would post
22 signs for kit fox zones on the road and a require traffic to slow down to 5 miles per hour in the
23 zones.

24 43. At the new hire orientation and at worker meetings, we were told by CSI management that we
25 were not supposed to honk our horns when we were driving on the Access Road because our
26 horns could disturb the local wildlife and the cattle. We were also told that we could not play
27 loud music that could be heard outside our vehicle while we were on the Access Road because
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1 the noise from the music could also disturb the local wildlife and the cattle. We were told that we
2 were not supposed to touch or feed anything to the local wildlife or cattle on the Solar Site or
3 along the Access Road.

4 **RULES ABOUT CREATING DUST ON THE ACCESS ROAD**

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6 44. At the new hire orientation and at worker meetings, we were told by CSI management there were
7 dust control rules related to the Solar Site that required the workers not to create too much dust.
8 We were told that we could not drive on the Access Road in a way that created dust and that we
9 needed to drive slowly if dust was being created. We were told that if we were creating dust, we
10 were driving too fast. We were told that the Solar Site had water trucks that would spray water
11 on the Access Road to prevent too much dust from being created by the vehicle that were driving
12 on it. Because of this watering, the Access Road was sometimes muddy and slippery. When it
13 was muddy and slippery, it was even slower and more difficult to drive on the Access Road.

14 **RULES ABOUT SMOKING**

15 45. We were told that we were not allowed to smoke either inside or outside of our vehicles while
16 we were driving on the Solar Site or Access Road or inside or outside of our vehicles in the
17 parking lots. We were told that we could only smoke in designated smoking areas.

18 **RULES ABOUT STAYING ON THE ACCESS ROAD**

19 46. At my new hire orientation, we were told by CSI management that, once we were released to
20 drive on the Access Road in the morning and at the end of the day, we had to drive directly on
21 the Access Road to our assigned parking lot in the morning and from our assigned parking lot
22 back to Turkey Flats Road at the end of the day and that we were to stay only on the Access
23 Road. We were told that although there were other intersecting roads along the Access Road, we
24 were not permitted to go onto any of those roads.

25 **RULES ABOUT STOPPING ON THE ACCESS ROAD**

26 47. At my new hire orientation and in worker meetings, we were told by CSI management that we
27 must strictly follow the “rules of the road” and keep the flow of traffic constantly moving on the
28 Access Road. We were told that except for emergencies, we were not allowed to stop on the

1 Access Road at any places that we were not specifically designated to stop at.

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3 48. At my new hire orientation and at worker meetings, we were told by CSI management that if we
4 had to get out of our vehicles for any reason, we were not allowed to go outside of the boundary
5 fences, stakes and ribbons that ran about 15 feet or so along the sides of the Access Road. We
6 were told that if we had to get out of our vehicles along the Access Road for any reason, we
7 could not disturb the environment, such as trampling or disturbing any plants.

8 **WORKERS WERE CONTROLLED BY CSI WHILE ON THE ACCESS ROAD**

- 9 49. After I went through the mandatory security entrance process and while driving on the Access
10 Road, I believed that I was, and actually was, restricted by, confined by, and under the control of
11 CSI. During these periods of time, I was confined to Solar Site and to the vehicle in which I was
12 riding and could not run errands outside of the Solar Site, could not go somewhere outside of the
13 Solar Site to get something to eat, and could not do other things that I could normally do outside
14 the Solar Site while on the Access Road.

- 15 50. I was not paid for the drive time on the Access Road or the time I spent waiting in line to go
16 through and going through the Phase 2 Security Gate security process during my time on Phase
17 2.

18 **THE MANDATORY SECURITY EXIT PROCESS**

- 19 51. I was told at the orientation that at the end of each workday after our work stop time, it was
20 CSI's policy that to exit the Solar Site, all workers had to drive to the Phase 2 Security Gate
21 (where the security process occurred) on the Access Road and wait for their turn to go through
22 the exit security process at the Phase 2 Security Gate. We were told that when we were traveling
23 from the parking lots to the Phase 2 Security Gate at the end of the day, we could not pass other
24 vehicles and had to wait in line for our turn to go through the exit security process, vehicle-by-
25 vehicle at the Phase 2 Security Gate. We were told that when a vehicle got to the front of the line
26 at the Phase 2 Security Gate at the end of the day, the vehicle was required to stop at the Phase 2
27 Security Gate (where the security process occurred) and wait until a security guard conducted the
28 exit security process. We were told that we were required to roll down our windows and present

1 our security identification badges for review and scanning by a security guard. We were told that
2 all drivers and passengers in a vehicle had to do the same thing. We were told that we workers
3 were not allowed to leave the Solar Site until we completed the exit security process at the Phase
4 2 Security Gate and the security guards allowed us to leave the Solar Site.

5 52. I was told at the Solar Site Orientation and in meetings that if a worker did not have his or her
6 security identification badge at the time that he or she wanted to exit the Solar Site through the
7 Phase 2 Security Gate (where the security process occurred), the worker could not exit the Solar
8 Site and had to pull out of line and go into the security guard shack at the Security Gate to be
9 released before being allowed to leave.

10 53. As I was going through the exit security process, I could see security guards looking inside my
11 vehicle and other vehicles through the windows. When I was riding with other people and when I
12 saw other vehicles with more than one person, I saw the security guards looking into the vehicles
13 to see how many people were in the vehicles and confirming that the identification badges
14 matched the people in the vehicles.

15 54. At the end of the day, the line waiting to get out of the Solar Site at the Phase 2 Security Gate
16 was even longer than the line to get into the Solar Site at the Security Gate at the beginning of
17 the day. This is because at the end of the day, hundreds of Solar Site workers would be leaving at
18 around the same time. The work stopping time for virtually all of the CSI workers was the same
19 and we were required to be off the Solar Site by a certain time. I observed and estimate that there
20 were many more than 25 vehicles leaving the Solar Site around the same time each workday.
21 Because of the number of vehicles leaving at once and because of the configuration of the Phase
22 2 Security Gate, the time it took me to wait in line and go through the exit security process to
23 leave the Solar Site could be 20 minutes or more depending on where my vehicle was in line to
24 exit. Waiting in line to go through the exit security process occurred every day I worked there.

25 55. I estimate that the security exit process could take up to a minute or so per vehicle, depending on
26 the number of passengers in the vehicle, to go through the security exit process after we finished
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1 waiting in the long line. If a van full of people were being scanned in, then the process could take
2 several more minutes for that vehicle alone.

3 56. In CSI meetings, I was told that it was CSI's policy that any workers who arrived at the Phase 2
4 Security Gate and attempted to exit the Solar Site through the exit security process too early at
5 the end of the workday could be disciplined or terminated.-While I worked for CSI, I was told
6 that certain workers did in fact arrive at the Phase 2 Security Gate at the end of the workday and
7 attempted to exit the Security Gate too early and were terminated.

8 57. During the time that I was waiting in line to exit the Phase 2 Security Gate (where the security
9 process occurred) and while I was going through the exit security process, I felt that I was, and
10 actually was, under CSI's control because I was confined to and could not leave the Solar Site
11 until I went through the exit security process, I was required to follow policies, processes and
12 rules required by CSI to exit the Solar Site through the Phase 2 Security Gate, and because I was
13 restricted as to what I could and could not do while I waited in line for and went through the exit
14 security process. For example, while I was waiting in line and confined to the Solar Site and
15 going through the exit security process, there was nothing that I could do other than wait in the
16 vehicle in which I was riding to complete the process. For example, I could not do any of the
17 following things: a) I could not pass any vehicles ahead of me, b) I could not leave the Solar Site,
18 c) I could not run any personal errands, d) I could not leave to get something to eat, e) I could not
19 perform any personal activities outside of my vehicle, f) I could not move my vehicle until the
20 security guards had let vehicles ahead of me, vehicle-by-vehicle, exit the Solar Site.

21 **MEAL BREAK LOCATION RULES**

22 58. I was told by CSI management and my foreman at worker meetings that CSI workers were
23 required to stay on the job during the entire workday from the beginning of the workday to the
24 end of the workday. I was told that workers were required to stay at our daily Installation Sites
25 during our meal periods. We were told that we workers were required to eat our lunches at our
26 daily Installation Solar Sites. I followed those instructions during meal periods and observed
27 other CSI workers follow those instructions during meal periods.
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59. I was never paid for the time that I was on meal breaks.

I declare under penalty of perjury under the laws of California and the United States that foregoing is true and correct.

Dated: 3/18/2021

DocuSigned by:
Kevin Clarno
2390DEAADA88451...
Kevin Clarno

Exhibit 4



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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself
and all others similarly situated and as a
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;
California Flats Solar, LLC, a Delaware Limited
Liability Company; CA Flats Solar 130, LLC, a
Delaware Limited Liability Company; CA Flats
Solar 150, LLC, a Delaware Limited Liability
Company; Cal Flats Solar CEI, LLC, a Delaware
Limited Liability Company; Cal Flats Solar
Holdco, LLC, a Delaware Limited Liability
Company; CSI Electrical Contractors, Inc.; Milco
National Constructors, Inc.; California
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF
CLASS ACTION**

**Declaration of Erick Tucker in Support of
Opposition to Motion for Partial Summary
Judgment**

Date: April 8, 2021
Time: 9:00 a.m.
Crtrm: 3

1 I, Erick Tucker declare:

- 2
- 3 1. I have personal knowledge of the following facts.
- 4 2. I was employed at the California Flats Solar Project (“Solar Site”) by Sachs Electric Company
- 5 (“Sachs”) as a wireman beginning in or around November of 2016 through the middle of June of
- 6 2017. During that time, I was assigned by Sachs’s management to step in as a foreman when my
- 7 crew foreman was absent. I was then hired by CSI for Phase 2 of the project starting around
- 8 September 2018.

9 **NEW HIRE ORIENTATION AND WORKER MEETINGS**

- 10 3. I was told by CSI management that all workers were required to attend a new hire orientation
- 11 that was conducted by personnel from CSI. I attended one of those orientations.
- 12 4. At the Solar Site, there were also many other worker meetings that included safety meetings,
- 13 monthly all-hands meetings, and other meetings. These meetings were conducted by a
- 14 combination of personnel from CSI and other contractors.
- 15 5. At these meetings, the other workers and I were told about the Solar Site rules including the rules
- 16 of the Access Road and the rules of the mandatory security entrance and exit process at the Phase
- 17 2 Security Gate.
- 18 6. At these meetings, the workers and I were told that we were required to follow all the rules of the
- 19 Solar Site. While I worked on the Solar Site, I always tried to follow the rules and I observed
- 20 other workers following the rules.
- 21 7. The CSI management people who conducted the worker meetings throughout the project
- 22 included CSI executives, safety people, general foreman, and superintendents.

23 **THE SOLAR SITE AND SECURITY GATE**

- 24 8. The Solar Site consisted of a large area of land surrounded by a fence with a Security Gate.
- 25 9. During Phase 1, the Security Gate was located near the intersection of Turkey Flats Road and
- 26 Highway 41.
- 27 10. During the time that I worked for CSI on Phase 2 of the project, the Phase 2 Security Gate had
- 28 been moved from the previous Phase 1 location and was about a 10 to 15-minute drive or more

1 from the parking lots. Prior to the creation of the Phase 2 Security Gate, the Phase 1 Security
2 Gate was about a 30 to 45-minute drive. Sometimes the drives from the parking lots to the Phase
3 1 and Phase 2 Security Gates were even longer.

4 11. I was told by CSI management during my orientation for Phase 2 that the first place the other
5 CSI workers and I were required to be at the beginning of the day in order to work was the Phase
6 2 Security Gate to line up and go through the mandatory entrance security process and drive on
7 the Access Road to the parking lots of the Solar Site.

8 12. I was told by CSI management during my orientation that the Phase 2 Security Gate was the only
9 entrance to the Solar Site that we could use to work on the Solar Site. After we passed through
10 the Phase 2 Security Gate, we then traveled along a long, rough, private road to get to the
11 parking lots where we parked our vehicles.

12 13. This mandatory entrance and exit security process at the Phase 2 Security Gate included waiting
13 in line for up to 5 to 20 minutes or more because the Security Gate configuration and the security
14 process caused a bottlenecked, long line of worker vehicles attempting to enter and exit the Solar
15 Site each day. The wait to exit the Solar Site through the Phase 2 Security Gate normally took
16 longer because virtually all of the workers on the Solar Site were attempting to leave at the same
17 time. This created a long line and a lot of waiting time.

18 14. From the time that the other CSI workers and I entered through the Phase 2 Security Gate at the
19 beginning of the day through the time that we left the Solar Site through the Phase 2 Security
20 Gate at the end of the day, we were subject to a broad range of job Solar Site rules and
21 restrictions and were monitored for our compliance with such rules and restrictions. During this
22 time, the other CSI workers and I could not effectively use this time for our own purposes.

23 15. I was not paid for the time it took me to wait in the long line of vehicles and pass through the
24 security process at the Phase 2 Security Gate to enter and exit the Solar Site each day.
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THE MANDATORY SECURITY ENTRANCE AND EXIT PROCESS

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- 2 16. To work at the Solar Site, that the first place the other CSI workers and I were required to be at
- 3 the beginning of the day was the Phase 2 Security Gate to line up and go through the mandatory
- 4 entrance security process and drive on the Access Road to the parking lots of the Solar Site.
- 5 17. The worker security badges that were part of the mandatory security entrance and exit process
- 6 contained the picture and name of the worker and the company name on them.
- 7 18. At my new hire orientation and at CSI meetings, I was told by CSI management that we workers
- 8 could not go beyond the Phase 2 Security Gate where we scanned in and out without our security
- 9 badges and without being scanned in or scanned out through the mandatory security process. I
- 10 was told that if a worker forgot or lost his or her security badge, the worker could not enter the
- 11 Solar Site without special permission.
- 12 19. At my new hire orientation and at CSI meetings, I was told by CSI management that once we
- 13 entered the Solar Site through the Phase 2 Security Gate where we scanned in and out, we always
- 14 had to have our badges so at the end of the day we could be scanned out through the mandatory
- 15 security exit process.
- 16 20. At the Phase 2 Security Gate where we scanned in and out, there was normally one and
- 17 sometimes two security guards who conducted the mandatory security entrance process for us
- 18 workers and our vehicles. Almost all the time, there was only one lane of traffic being processed
- 19 by the security guard to enter or exist the Solar Site. There were almost never two lanes of traffic
- 20 going in the same direction being checked through the Phase 2 Security Gate at the same time.
- 21 This is because the Access road was narrow and, if two lanes of traffic were being processed
- 22 through the Phase 2 Security Gate in the same direction, there was no place for traffic moving
- 23 the opposite direction to go through the security process at the Security Gate.
- 24 21. To conduct the mandatory entrance and exit security process, the security guard or guards would
- 25 stop each vehicle to check for security badges of the passengers or check for other information if
- 26 the vehicle was a vendor vehicle.
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22. For both entering and exiting the Solar Site, when there were two security guards inspecting and scanning in security badges, the security guards would each stand on a side of the vehicle to inspect and scan in security badges.
23. For both entering and exiting the Solar Site, the security guards required each vehicle to stop at the Phase 2 Security Gate where the security process occurred so that each passenger could be checked. The passengers in the vehicles would roll down their windows and hand the security badges to the security guard for inspection and scanning. The number of security badges in each vehicle was required to match the number of passengers in each vehicle. The security guards would then scan each worker's security badge in each vehicle before letting them pass through the Phase 2 Security Gate.
24. At the Phase 2 Security Gate, there was always a long, bottlenecked line of vehicles waiting to enter. The mandatory security entrance process was conducted one vehicle at a time using the same procedure. In the morning, there were worker vehicles and vans waiting in line to go through the Phase 2 Security Gate.
25. For both entering and exiting the Solar Site, sometimes the drivers would present all of the badges to the security guard at once. Other times they did not, and the security guards would go to each window of the vehicle where the passengers were sitting and inspect and scan their security badges. Each security badge was inspected and scanned individually by the security guards.
26. For both entering and exiting the Solar Site through the Security Gate where the security process occurred, if passengers in a vehicle did not have security badges, the security guards would pull the vehicle out of line, would make the vehicle park on the side of the road, and would require any passengers who did not have their scan-in badges to go into the guard shack to be cleared to enter or exit the Solar Site.
27. Once any passengers who did not have security badges were cleared to pass through the Security Gate and received a visitor's badge, the vehicle was allowed to get back in line and proceed on the Access Road.

1 28. The same kind of long, bottlenecked line of vehicles also occurred on the way out of the Phase 2
2 Security Gate (where the security process occurred) at the end of the day. This mandatory exit
3 security process included waiting in line, which could take up to anywhere between 10 to 20
4 minutes or more because of the Security Gate’s bottlenecked configuration and long line of the
5 workers attempting to leave the Solar Site at the end of the day and the inspection and scanning
6 of employees’ badges by the security guards. My time in line depended on where my place in
7 line was and other factors – for example, if there were cattle in the middle of the road. We
8 workers were told by CSI management that we could not force the cattle off the road and had to
9 wait for the cattle to pass.

10 29. I was told by CSI management at my orientation that as part of the security entrance and exit
11 process, the security guards had the right to look inside and search any worker vehicle at any
12 time. There was also a sign on the Solar Site that said any vehicle on their property is subject to
13 search and seizure.

14 30. I have seen the security guards search vehicles during the exit security process.

15 31. During the time that I was waiting in the lines to go through the security process to exit the Solar
16 Site and going through all the steps of the security process to exit the Solar Site, I believed that I
17 was, and actually was, restricted by, confined by, and under the control of CSI. During these
18 periods of time, I was confined to the Solar Site and to the vehicle in which I was riding and
19 could not run errands outside of the Solar Site, could not go somewhere to get something to eat,
20 and could not do other things that I could normally do if I were not restricted by, confined by or
21 controlled by the long lines and security process to exit the Solar Site.

22 **RULES ABOUT NOT BEING ON THE SOLAR SITE BEFORE SUNRISE AND UNTIL THE**
23 **BIOLOGISTS CLEARED THE SOLAR SITE**

24 32. We were told the time at which the Solar Site was scheduled to open and were periodically
25 updated about any changes to the scheduled opening times. We were told that we were not
26 allowed to enter the Solar Site until the sun had come up and the biologists had cleared the Solar
27 Site to be opened and had added barricades if endangered species were near the roadway or wait
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1 for the water trucks to wet the roadway for dust control. We would then proceed to the Phase 2
2 Security Gate where the security and badging process took place.

3 **THE ACCESS ROAD**

- 4
5 33. I was told by CSI management that they wanted all workers to drive vehicles on the Access
6 Road.
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8 34. There was no possible way to walk or ride a bicycle from the Phase 2 Security Gate to the
9 parking lots in the morning and get to work on time or to get from the parking lots to the Security
10 Gate on time at the end of the day because workers were restricted as to when we were allowed
11 to be on the Solar Site.
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13 35. Solar Site management also monitored us while we were driving on the Access Road. I
14 remember seeing CSI personnel on the Access Road who were monitoring the behavior of
15 workers while they were driving on the road. I also observed speed monitors alongside the road,
16 especially near kitfox dens, and environmentalist patrolling the road.
17
18 36. I was told by CSI personnel at my orientation that from the time that we workers went through
19 the Phase 2 Security Gate in the morning until we went out of them at the end of the workday,
20 we were subject to all the Solar Site's rules, including the rules relating to the Access Road, and
21 could be suspended or terminated for violating them and that all workers were being watched
22 carefully while we were on the Solar Site and the Access Road
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24 37. I was also told about specific "rules of the road" that applied to the Access Road. These rules
25 were in addition to signs that were posted before and after we went through the mandatory
26 security entrance process and went through the Phase 2 Security Gate. As problems would arise,
27 the foreman would reiterate certain rules the morning after. For example, if someone was caught
28 speeding, the speeding would be reiterated in the morning meeting the day after.
38. At my new hire orientation, we were told by CSI management that we were subject to having our
bodies, personal property and vehicle searched by CSI and other Solar Site management at any
time while inside the Phase 2 Security Gate or on the Access Road. We were also told that we

1 were subject to drug and alcohol testing at any time while inside the Security Gates or on the
2 Access Road.

3 39. From the time that I entered the Phase 2 Security Gate in the morning until I exited the Security
4 Gates at the end of the day, I believed that I was under the control of CSI because of the job
5 Solar Site rules that we were subject to, because of how much CSI warned us about them and
6 how the rules were being enforced.

7 40. There were many rules that we were told by CSI and Solar Site management that we had to
8 follow, including those discussed below.

9 **INSTRUCTION SIGNS**

10 41. There were signs along the Turkey Flats road and around the Security Gates displaying a number
11 of instructions. At my new hire orientation and at worker meetings, we were told by CSI
12 management that we had to obey the instructions on the signs of the Solar Site. I recall that these
13 instructions, among other things, included things like:

- 14 • be prepared to wear PPE (Personal Protective Equipment) beyond this point;
- 15 • all visitors must check in at the guard shack;
- 16 • must have badge;
- 17 • speed limit;
- 18 • pictures of animals that I was told to look out for and not to interfere with;
- 19 • no smoking;
- 20 • no drugs; and
- 21 • no firearms.

22 42. At my new hire orientation and at worker meetings, we were told by CSI management that we
23 were required to wear our PPE (Personal Protective Equipment) at all times when we were on the
24 Solar Site, including from the time that we entered the Phase 2 Security Gate in the morning until
25 the time that we left the Security Gate at the end of the day.

26 **RULES ABOUT SPEEDING ON THE ACCESS ROAD**

27 43. I recall that there were speed limits signs with speed limits between 5 and 15 miles per hour
28 posted on the Access Road.

1 44. At my new hire orientation and at worker meetings, we were told by CSI management that they
2 were monitoring our activities and the speeds of vehicles on the Access Road. We were told that
3 there were speed radar machines and cameras installed along the Access Road. At least one of
4 these radar machines was located on the Access Road and had a digital sign that would tell us
5 how fast we were going. I also saw people using hand-held radar machines to monitor the speed
6 of workers. We were told that if we violated the speed limits or “rules of the road” or other job
7 Solar Site rules, we could be suspended or terminated.

8 45. At times on the Access Road, I was often only allowed to drive at 5 to 10 miles per hour because
9 of animals near the road, the conditions of the road, cattle grids, the road being wet because of
10 the Solar Site watering of the road, poor road conditions and other reasons.

11 **RULES ABOUT PASSING ON THE ROAD**

12 46. During our drive on the Access Road, gaps would form between cars for any number of reasons
13 such as animals on the road, someone’s car breaking down, someone driving more slowly than
14 the rest of the cars, or a whole range of the conditions related to the road. Regardless of these
15 gaps, we were told by CSI management that we were not allowed to go above the speed limit or
16 pass another moving vehicle for any reason, except when a car had broken down or pulled over
17 to the side of the road.

18 **RULES ABOUT LIVESTOCK AND ENDANGERED ANIMALS ON THE ACCESS ROAD**

19 47. The Access Road was a long, rough dirt road that was very difficult to drive on and very hard on
20 vehicles. Along the Access Road, there were several steel cattle grids that we were required to
21 drive over. Cattle grazed along the Access Road and would frequently be very near or on the
22 road and they interfered with the ability of vehicles to travel on the road.

23 48. At the new hire orientation and at worker meetings, we were told by CSI management that we
24 were not allowed to disturb the cattle or local wildlife in any way while we were driving on the
25 Access Road. We were told that if we saw animals on or near the road, we had to let them do
26 whatever they needed to do and that we were not allowed to do anything to try to get them to
27 move off the road, such as honk our car horns. We were told that we had to slow down or stop
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1 our vehicle and just stay in our vehicles and wait for them to go away from the road. We were
2 told that we mainly had to be careful about cattle and kit foxes, but there were also other animals
3 that we were supposed to watch out for. The presence of animals on or around the road
4 frequently slowed down the drive on the Access Road. Often, the environmentalist would post
5 signs for kit fox zones on the road and a require traffic to slow down to 5 miles per hour in the
6 zones.

7 49. At the new hire orientation and at worker meetings, we were told by CSI management that we
8 were not supposed to honk our horns when we were driving on the Access Road because our
9 horns could disturb the local wildlife and the cattle. We were also told that we could not play
10 loud music that could be heard outside our vehicle while we were on the Access Road because
11 the noise from the music could also disturb the local wildlife and the cattle. We were told that we
12 were not supposed to touch or feed anything to the local wildlife or cattle on the Solar Site or
13 along the Access Road.

14 **RULES ABOUT CREATING DUST ON THE ACCESS ROAD**

15 50. At the new hire orientation and at worker meetings, we were told by CSI management there were
16 dust control rules related to the Solar Site that required the workers not to create too much dust.
17 We were told that we could not drive on the Access Road in a way that created dust and that we
18 needed to drive slowly if dust was being created. We were told that if we were creating dust, we
19 were driving too fast. We were told that the Solar Site had water trucks that would spray water
20 on the Access Road to prevent too much dust from being created by the vehicle that were driving
21 on it. Because of this watering, the Access Road was sometimes muddy and slippery. When it
22 was muddy and slippery, it was even slower and more difficult to drive on the Access Road.

23 **RULES ABOUT SMOKING**

24 51. We were told that we were not allowed to smoke either inside or outside of our vehicles while
25 we were driving on the Solar Site or Access Road or inside or outside of our vehicles in the
26 parking lots. We were told that we could only smoke in designated smoking areas.
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RULES ABOUT STAYING ON THE ACCESS ROAD

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2 52. At my new hire orientation, we were told by CSI management that, once we were released to
3 drive on the Access Road in the morning and at the end of the day, we had to drive directly on
4 the Access Road to our assigned parking lot in the morning and from our assigned parking lot
5 back to Turkey Flats Road at the end of the day and that we were to stay only on the Access
6 Road. We were told that although there were other intersecting roads along the Access Road, we
7 were not permitted to go onto any of those roads.

8 **RULES ABOUT STOPPING ON THE ACCESS ROAD**

9 53. At my new hire orientation and in worker meetings, we were told by CSI management that we
10 must strictly follow the “rules of the road” and keep the flow of traffic constantly moving on the
11 Access Road. We were told that except for emergencies, we were not allowed to stop on the
12 Access Road at any places that we were not specifically designated to stop at.

13 54. At my new hire orientation and at worker meetings, we were told by CSI management that if we
14 had to get out of our vehicles for any reason, we were not allowed to go outside of the boundary
15 fences, stakes and ribbons that ran about 15 feet or so along the sides of the Access Road. We
16 were told that if we had to get out of our vehicles along the Access Road for any reason, we
17 could not disturb the environment, such as trampling or disturbing any plants.

18 **WORKERS WERE CONTROLLED BY CSI WHILE ON THE ACCESS ROAD**

19 55. After I went through the mandatory security entrance process and while driving on the Access
20 Road, I believed that I was, and actually was, restricted by, confined by, and under the control of
21 CSI. During these periods of time, I was confined to Solar Site and to the vehicle in which I was
22 riding and could not run errands outside of the Solar Site, could not go somewhere outside of the
23 Solar Site to get something to eat, and could not do other things that I could normally do outside
24 the Solar Site while on the Access Road.

25 56. I was not paid for the drive time on the Access Road or the time I spent waiting in line to go
26 through and going through the Phase 2 Security Gate security process.
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THE MANDATORY SECURITY EXIT PROCESS

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- 2 57. I was told at the orientation that at the end of each workday after our work stop time, it was
- 3 CSI's policy that to exit the Solar Site, all workers had to drive to the Phase 2 Security Gate
- 4 (where the security process occurred) on the Access Road and wait for their turn to go through
- 5 the exit security process at the Phase 2 Security Gate. We were told that when we were traveling
- 6 from the parking lots to the Phase 2 Security Gate at the end of the day, we could not pass other
- 7 vehicles and had to wait in line for our turn to go through the exit security process, vehicle-by-
- 8 vehicle at the Phase 2 Security Gate. We were told that when a vehicle got to the front of the line
- 9 at the Phase 2 Security Gate at the end of the day, the vehicle was required to stop at the Phase 2
- 10 Security Gate (where the security process occurred) and wait until a security guard conducted the
- 11 exit security process. We were told that we were required to roll down our windows and present
- 12 our security identification badges for review and scanning by a security guard. We were told that
- 13 all drivers and passengers in a vehicle had to do the same thing. We were told that we workers
- 14 were not allowed to leave the Solar Site until we completed the exit security process at the Phase
- 15 2 Security Gate and the security guards allowed us to leave the Solar Site.
- 16 58. I was told at the Solar Site Orientation and in meetings that if a worker did not have his or her
- 17 security identification badge at the time that he or she wanted to exit the Solar Site through the
- 18 Phase 2 Security Gate (where the security process occurred), the worker could not exit the Solar
- 19 Site and had to pull out of line and go into the security guard shack at the Security Gate to be
- 20 released before being allowed to leave.
- 21 59. As I was going through the exit security process, I could see security guards looking inside my
- 22 vehicle and other vehicles through the windows. When I was riding with other people and when I
- 23 saw other vehicles with more than one person, I saw the security guards looking into the vehicles
- 24 to see how many people were in the vehicles and confirming that the identification badges
- 25 matched the people in the vehicles.
- 26 60. At the end of the day, the line waiting to get out of the Solar Site at the Phase 2 Security Gate
- 27 was even longer than the line to get into the Solar Site at the Security Gate at the beginning of
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1 the day. This is because at the end of the day, hundreds of Solar Site workers would be leaving at
2 around the same time. The work stopping time for virtually all of the CSI workers was the same
3 and we were required to be off the Solar Site by a certain time. I observed and estimate that there
4 were many more than 25 vehicles leaving the Solar Site around the same time each workday.
5 Because of the number of vehicles leaving at once and because of the configuration of the Phase
6 2 Security Gate, the time it took me to wait in line and go through the exit security process to
7 leave the Solar Site could be 10 to 20 minutes or more depending on where my vehicle was in
8 line to exit. Waiting in line to go through the exit security process occurred every day I worked
9 there.

- 10 61. I estimate that the security exit process could take up to 2 minutes or more per vehicle to go
11 through the security exit process after we finished waiting in the long line. If a van full of people
12 were being scanned in, then the process could take several more minutes for that vehicle alone.
- 13 62. At the Solar Site Orientation and in meetings, I was told that it was CSI's policy that any
14 workers who arrived at the Phase 2 Security Gate and attempted to exit the Solar Site through the
15 exit security process too early at the end of the workday could be disciplined or terminated. I was
16 also told this by fellow co-workers who worked for CSI as well.
- 17 63. While I worked for CSI, I was told by other co-workers that certain workers did in fact arrive at
18 the Phase 2 Security Gate at the end of the workday and attempted to exit the Security Gate too
19 early and were terminated.
- 20 64. During the time that I was waiting in line to exit the Phase 2 Security Gate (where the security
21 process occurred) and while I was going through the exit security process, I felt that I was under
22 CSI's control because I was confined to and could not leave the Solar Site until I went through
23 the exit security process, I was required to follow policies, processes and rules required by CSI to
24 exit the Solar Site through the Phase 2 Security Gate, and because I was restricted as to what I
25 could and could not do while I waited in line for and went through the exit security process. For
26 example, while I was waiting in line and confined to the Solar Site and going through the exit
27 security process, there was nothing that I could do other than wait in the vehicle in which I was
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riding to complete the process. For example, I could not do any of the following things: a) I could not pass any vehicles ahead of me, b) I could not leave the Solar Site, c) I could not run any personal errands, d) I could not leave to get something to eat, e) I could not perform any personal activities outside of my vehicle, f) I could not move my vehicle until the security guards had let vehicles ahead of me, vehicle-by-vehicle, exit the Solar Site.

MEAL BREAK LOCATION RULES

65. I was told by CSI management and my foreman at worker meetings that CSI workers were required to stay on the job during the entire workday from the beginning of the workday to the end of the workday. I was told that workers were required to stay at our daily Installation Sites during our meal periods.

66. We were told that we workers were required to eat our lunches at our daily Installation Solar Sites. I followed those instructions during meal periods and observed other CSI workers follow those instructions during meal periods.

67. I was never paid for the time that I was on meal breaks.

I declare under penalty of perjury under the laws of California and the United States that foregoing is true and correct.

Dated: March 18, 2021



Erick Tucker

Exhibit 5



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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself
and all others similarly situated and as a
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;
California Flats Solar, LLC, a Delaware Limited
Liability Company; CA Flats Solar 130, LLC, a
Delaware Limited Liability Company; CA Flats
Solar 150, LLC, a Delaware Limited Liability
Company; Cal Flats Solar CEI, LLC, a Delaware
Limited Liability Company; Cal Flats Solar
Holdco, LLC, a Delaware Limited Liability
Company; CSI Electrical Contractors, Inc.; Milco
National Constructors, Inc.; California
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF
CLASS ACTION**

**Declaration of Mark Garcia in Support of
Opposition to Motion for Partial Summary
Judgment**

Date: April 8, 2021
Time: 9:00 a.m.
Crtrm: 3

1 I, Mark Garcia, declare:

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- 3 1. I have personal knowledge of the following facts.
- 4 2. I was employed at the California Flats Solar Project (“Solar Site”) by Sachs Electric Company
- 5 for Phase 1 as a CW 5 starting June of 2017 until March of 2018. I was then hired by CSI for
- 6 Phase 2 as a CW 6 for about 10 months.

7 **NEW HIRE ORIENTATION AND WORKER MEETINGS**

- 8 3. I was told by CSI management that all workers were required to attend a new hire orientation
- 9 that was conducted by personnel from CSI. I attended one of those orientations.
- 10 4. At the Solar Site, there were also many other worker meetings that included safety meetings,
- 11 monthly all-hands meetings, and other meetings. These meetings were conducted by a
- 12 combination of personnel from CSI and other contractors.
- 13 5. At these meetings, the other workers and I were told about the Solar Site rules including the rules
- 14 of the Access Road and the rules of the mandatory security entrance and exit process at the Phase
- 15 2 Security Gate.
- 16 6. At these meetings, the workers and I were told that we were required to follow all the rules of the
- 17 Solar Site. While I worked on the Solar Site, I always tried to follow the rules and I observed
- 18 other workers following the rules.
- 19 7. The CSI management people who conducted the worker meetings throughout the project
- 20 included CSI executives, safety people, general foreman, and superintendents.

21 **THE SOLAR SITE AND SECURITY GATE**

- 22 8. The Solar Site consisted of a large area of land surrounded by a fence with a Security Gate.
- 23 During Phase 1, the Security Gate was located near the intersection of Turkey Flats Road and
- 24 Highway 41. During the time that I worked for CSI on Phase 2 of the project, the Phase 2
- 25 Security Gate had been moved from the previous Phase 1 location and was about a 10 to 15-
- 26 minute drive from the parking lots. Prior to the creation of the Phase 2 Security Gate, the Phase 1
- 27 Security Gate was about a 30-minute drive. Sometimes the drives from the parking lots to the
- 28 Phase 1 and Phase 2 Security Gates were even longer.

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9. I was told by CSI management (including my foreman Daniel Jimenez), for Phase 2 that the first place the other CSI workers and I were required to be at the beginning of the day in order to work was the Phase 2 Security Gate to line up and go through the mandatory entrance security process and drive on the Access Road to the parking lots.
10. I was told by CSI management during my orientation that the Phase 2 Security Gate was the only entrance to the Solar Site that we could use to work on the Solar Site. After we passed through the Phase 2 Security Gate, we then traveled along a long, rough, private road to get to the parking lots where we parked our vehicles.
11. This mandatory entrance and exit security process at the Phase 2 Security Gate included waiting in line for up to 20 minutes because the Security Gate configuration and the security process caused a bottlenecked, long line of worker vehicles attempting to enter and exit the Solar Site each day depending on your place in line or the time that you arrived. The wait to exit the Solar Site through the Phase 2 Security Gate normally took longer because virtually all of the workers on the Solar Site were attempting to leave at the same time. This created a long line and a lot of waiting time.
12. From the time that the other CSI workers and I entered through the Phase 2 Security Gate at the beginning of the day through the time that we left the Solar Site through the Phase 2 Security Gate at the end of the day, we were subject to a broad range of job Solar Site rules and restrictions and were monitored for our compliance with such rules and restrictions. During this time, the other CSI workers and I could not effectively use this time for our own purposes.
13. I was not paid for the time it took me to wait in the long line of vehicles and pass through the security process at the Phase 2 Security Gate to enter and exit the Solar Site each day.

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THE MANDATORY SECURITY ENTRANCE AND EXIT PROCESS

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14. To work at the Solar Site, the first place the other CSI workers and I were required to be at the beginning of the day was the Phase 2 Security Gate to line up and go through the mandatory entrance security process and drive on the Access Road to the parking lots of the Solar Site. The

1 worker security badges that were part of the mandatory security entrance and exit process
2 contained the picture and name of the worker and the company name on them.

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4 15. At my new hire orientation and at CSI meetings, I was told by CSI management and my foreman
5 Daniel Jimenez that we workers could not go beyond the Phase 2 Security Gate where the
6 security process occurred without our security badges and without being scanned in or scanned
7 out through the mandatory security process. I was told that if a worker forgot or lost his or her
8 security badge, the worker could not enter the Solar Site without special permission.
- 9 16. At my new hire orientation and at CSI meetings, I was told by CSI management that once we
10 entered the Solar Site through the Phase 2 Security Gate where the security process occurred, we
11 always had to have our badges so at the end of the day we could be scanned out through the
12 mandatory security exit process.
- 13 17. At the Phase 2 Security Gate where the security process occurred, there was normally one and
14 sometimes two security guards who conducted the mandatory security entrance process for us
15 workers and our vehicles. Almost all the time, there was only one lane of traffic being processed
16 by the security guard to enter or exit the Solar Site.
- 17 18. To conduct the mandatory entrance and exit security process, the security guard or guards would
18 stop each vehicle to check for security badges of the passengers or check for other information if
19 the vehicle was a vendor vehicle. They required buses to stop, so if you got stuck behind a bus, it
20 would take you much longer to get through the security process.
- 21 19. For both entering and exiting the Solar Site, when there were two security guards inspecting and
22 scanning in security badges, the security guards would each stand on a side of the vehicle to
23 inspect and scan in security badges.
- 24 20. For both entering and exiting the Solar Site, the security guards required each vehicle to stop at
25 the Phase 2 Security Gate where the security process occurred so that each passenger could be
26 checked. The passengers in the vehicles would roll down their windows and hand the security
27 badges to the security guard for inspection and scanning. The number of security badges in each
28 vehicle was required to match the number of passengers in each vehicle. The security guards

1 would then scan each worker's security badge in each vehicle before letting them pass through
2 the Phase 2 Security Gate.

- 3 21. At the Phase 2 Security Gate, there was always a long line of vehicles waiting to enter. The
4 mandatory security entrance process was conducted one vehicle at a time using the same
5 procedure. In the morning, there were worker vehicles and buses waiting in line to go through
6 the Phase 2 Security Gate.
- 7 22. For both entering and exiting the Solar Site, sometimes the drivers would present all of the
8 badges to the security guard at once. Other times they did not, and the security guards would go
9 to each window of the vehicle where the passengers were sitting and inspect and scan their
10 security badges. Each security badge was inspected and scanned individually by the security
11 guards.
- 12 23. For both entering and exiting the Solar Site through the Security Gate where the security process
13 occurred, if passengers in a vehicle did not have security badges, the security guards would pull
14 the vehicle out of line, would make the vehicle park on the side of the road, and would require
15 any passengers who did not have their scan-in badges to go into the guard shack to be cleared to
16 enter or exit the Solar Site.
- 17 24. Once any passengers who did not have security badges were cleared to pass through the Security
18 Gate and received a visitor's badge, the vehicle was allowed to get back in line and proceed on
19 the Access Road. Sometimes, they would call your foreman before giving a visitors' badge and
20 letting you go back inside the Solar Site.
- 21 25. The same kind of long line of vehicles also occurred on the way out of the Phase 2 Security Gate
22 (where the security process occurred) at the end of the day. This mandatory exit security process
23 included waiting in line, which could take up to anywhere between 10 to 20 minutes or more
24 because of the Security Gate's bottlenecked configuration and long line of the workers
25 attempting to leave the Solar Site at the end of the day and the inspection and scanning of
26 employees' badges by the security guards. My time in line depended on where my place in line
27 was and other factors – for example, if there were cattle in the middle of the road. We workers
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1 were told by CSI management that we could not force the cattle off the road and had to wait for
2 the cattle to pass.

3 26. I was told by CSI management at my orientation that as part of the security entrance and exit
4 process, the security guards had the right to look inside and search any worker vehicle at any
5 time. There was also a sign on the Solar Site that said any vehicle on their property is subject to
6 search and seizure. We were told that we were subject to being searched if the security guards
7 thought a worker might be stealing tools or supplies.

8 27. I have seen the security guards search a vehicle during the security process at the guard shack.

9 28. During the time that I was waiting in the lines to go through the security process to exit the Solar
10 Site and going through all the steps of the security process to exit the Solar Site, I believed that I
11 was, and actually was, restricted by, confined by, and under the control of CSI. During these
12 periods of time, I was confined to the Solar Site and to the vehicle in which I was riding and
13 could not run errands outside of the Solar Site, could not go somewhere to get something to eat,
14 and could not do other things that I could normally do if I were not restricted by, confined by or
15 controlled by the long lines and security process to exit the Solar Site.

16 **RULES ABOUT NOT BEING ON THE SOLAR SITE BEFORE SUNRISE AND UNTIL THE**
17 **BIOLOGISTS CLEARED THE SOLAR SITE**

18 29. We were told the time at which the Solar Site was scheduled to open and were periodically
19 updated about any changes to the scheduled opening times. We were told that we were not
20 allowed to enter the Solar Site until the sun had come up and the biologists had cleared the Solar
21 Site to be opened and had added barricades if endangered species were near the roadway or wait
22 for the water trucks to wet the roadway for dust control. We would then proceed to the Phase 2
23 Security Gate where the security and badging process took place.

24 **THE ACCESS ROAD**

25 30. I was told by CSI management that they wanted all workers to drive vehicles on the Access
26 Road. There was no possible way to walk or ride a bicycle from the Phase 2 Security Gate to the
27 parking lots in the morning and get to work on time or to get from the parking lots to the Security
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1 Gate on time at the end of the day because workers were restricted as to when we were allowed
2 to be on the Solar Site.

- 3 31. Solar Site management also monitored us while we were driving on the Access Road. I
4 remember seeing CSI personnel on the Access Road who were monitoring the behavior of
5 workers while they were driving on the road. I also observed speed monitors alongside the road,
6 especially near kitfox dens, and environmentalist patrolling the road.
- 7 32. I was told by CSI personnel at my orientation that from the time that we workers went through
8 the Phase 2 Security Gate in the morning until we went out of them at the end of the workday,
9 we were subject to all the Solar Site's rules, including the rules relating to the Access Road, and
10 could be suspended or terminated for violating them and that all workers were being watched
11 carefully while we were on the Solar Site and the Access Road
- 12 33. I was also told about specific "rules of the road" that applied to the Access Road. These rules
13 were in addition to signs that were posted before and after we went through the mandatory
14 security entrance process and went through the Phase 2 Security Gate. As problems would arise,
15 the foreman would reiterate certain rules the morning after. For example, if someone was caught
16 speeding, the speeding would be reiterated in the morning meeting the day after.
- 17 34. At my new hire orientation, we were told by CSI management that we were subject to having our
18 bodies, personal property and vehicle searched by CSI and other Solar Site management at any
19 time while inside the Phase 2 Security Gate or on the Access Road. We were also told that we
20 were subject to drug and alcohol testing at any time while inside the Security Gates or on the
21 Access Road.
- 22 35. From the time that I entered the Phase 2 Security Gate in the morning until I exited the Security
23 Gates at the end of the day, I believed that I was, and was, under the control of CSI because of
24 the job Solar Site rules that we were subject to, because of how much CSI warned us about them
25 and how the rules were being enforced.
- 26 36. There were many rules that we were told by CSI and Solar Site management that we had to
27 follow, including those discussed below.
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INSTRUCTION SIGNS

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2 37. There were signs along the Turkey Flats road and around the Security Gates displaying a number
3 of instructions. At my new hire orientation and at worker meetings, we were told by CSI
4 management that we had to obey the instructions on the signs of the Solar Site. I recall that these
5 instructions, among other things, included things like:

- 6 • be prepared to wear PPE (Personal Protective Equipment) beyond this point;
- 7 • all visitors must check in at the guard shack;
- 8 • must have badge;
- 9 • speed limit;
- 10 • pictures of animals that I was told to look out for and not to interfere with;
- 11 • no smoking;
- 12 • no drugs; and
- 13 • no firearms.

14 38. At my new hire orientation and at worker meetings, we were told by CSI management that we
15 were required to wear our PPE (Personal Protective Equipment) at all times when we were on the
16 Solar Site, including from the time that we entered the Phase 2 Security Gate in the morning until
17 the time that we left the Security Gate at the end of the day.

RULES ABOUT SPEEDING ON THE ACCESS ROAD

18 39. I recall that there were speed limits signs with speed limits between 5 and 15 miles per hour
19 posted on the Access Road. At my new hire orientation and at worker meetings, we were told by
20 CSI management that they were monitoring our activities and the speeds of vehicles on the
21 Access Road. We were told that there were speed radar machines installed along the Access
22 Road. At least one of these radar machines was located on the Access Road and had a digital
23 sign that would tell us how fast we were going. I also saw people using hand-held radar
24 machines to monitor the speed of workers. We were told that if we violated the speed limits or
25 “rules of the road” or other job Solar Site rules, we could be suspended or terminated.
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40. At times on the Access Road, I was often only allowed to drive at 5 to 10 miles per hour because of animals near the road, the conditions of the road, cattle grids, the road being wet because of the Solar Site watering of the road, poor road conditions and other reasons.

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RULES ABOUT PASSING ON THE ROAD

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41. During our drive on the Access Road, gaps would form between cars for any number of reasons such as animals on the road, someone's car breaking down, someone driving more slowly than the rest of the cars, or a whole range of the conditions related to the road. Regardless of these gaps, we were told by CSI management that we were not allowed to go above the speed limit or pass another moving vehicle for any reason, except when a car had broken down or pulled over to the side of the road.

RULES ABOUT LIVESTOCK AND ENDANGERED ANIMALS ON THE ACCESS ROAD

42. The Access Road was a long, rough dirt road that was very difficult to drive on and very hard on vehicles. Along the Access Road, there were several steel cattle grids that we were required to drive over. Cattle grazed along the Access Road and would frequently be very near or on the road and they interfered with the ability of vehicles to travel on the road.

43. At the new hire orientation and at worker meetings, we were told by CSI management that we were not allowed to disturb the cattle or local wildlife in any way while we were driving on the Access Road. We were told that if we saw animals on or near the road, we had to let them do whatever they needed to do and that we were not allowed to do anything to try to get them to move off the road, such as honk our car horns. We were told that we had to slow down or stop our vehicle and just stay in our vehicles and wait for them to go away from the road. We were told that we mainly had to be careful about cattle and kit foxes, but there were also other animals that we were supposed to watch out for. The presence of animals on or around the road frequently slowed down the drive on the Access Road. Often, the environmentalist would post signs for kit fox zones on the road and a require traffic to slow down to 5 miles per hour in the zones.

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44. At the new hire orientation and at worker meetings, we were told by CSI management that we were not supposed to honk our horns when we were driving on the Access Road because our horns could disturb the local wildlife and the cattle. We were also told that we could not play loud music that could be heard outside our vehicle while we were on the Access Road because the noise from the music could also disturb the local wildlife and the cattle. We were told that we were not supposed to touch or feed anything to the local wildlife or cattle on the Solar Site or along the Access Road.

RULES ABOUT CREATING DUST ON THE ACCESS ROAD

45. At the new hire orientation and at worker meetings, we were told by CSI management there were dust control rules related to the Solar Site that required the workers not to create too much dust. We were told that we could not drive on the Access Road in a way that created dust and that we needed to drive slowly if dust was being created. We were told that if we were creating dust, we were driving too fast. We were told that the Solar Site had water trucks that would spray water on the Access Road to prevent too much dust from being created by the vehicle that were driving on it. Because of this watering, the Access Road was sometimes muddy and slippery. When it was muddy and slippery, it was even slower and more difficult to drive on the Access Road. Even if the zone was a 15-mph section, if we were creating dust, we had to drive at 5 mph.

RULES ABOUT SMOKING

46. We were told that we were not allowed to smoke either inside or outside of our vehicles while we were driving on the Solar Site or Access Road or inside or outside of our vehicles in the parking lots. We were told that we could only smoke in designated smoking areas.

RULES ABOUT STAYING ON THE ACCESS ROAD

47. At my new hire orientation, we were told by CSI management that, once we were released to drive on the Access Road in the morning and at the end of the day, we had to drive directly on the Access Road to our assigned parking lot in the morning and from our assigned parking lot back to Turkey Flats Road at the end of the day and that we were to stay only on the Access

1 Road. We were told that although there were other intersecting roads along the Access Road, we
2 were not permitted to go onto any of those roads.

3 **RULES ABOUT STOPPING ON THE ACCESS ROAD**

4 48. At my new hire orientation and in worker meetings, we were told by CSI management that we
5 must strictly follow the “rules of the road” and keep the flow of traffic constantly moving on the
6 Access Road. We were told that except for emergencies, we were not allowed to stop on the
7 Access Road at any places that we were not specifically designated to stop at.

8 49. At my new hire orientation and at worker meetings, we were told by CSI management that if we
9 had to get out of our vehicles for any reason, we were not allowed to go outside of the boundary
10 fences, stakes and ribbons that ran about 15 feet or so along the sides of the Access Road. We
11 were told that if we had to get out of our vehicles along the Access Road for any reason, we
12 could not disturb the environment, such as trampling or disturbing any plants. We were told there
13 were certain environmental areas that we were not supposed to stop at for any reason.

14 **WORKERS WERE CONTROLLED BY CSI WHILE ON THE ACCESS ROAD**

15 50. After I went through the mandatory security entrance process and while driving on the Access
16 Road, I believed that I was, and actually was, restricted by, confined by, and under the control of
17 CSI. During these periods of time, I was confined to Solar Site and to the vehicle in which I was
18 riding and could not run errands outside of the Solar Site, could not go somewhere outside of the
19 Solar Site to get something to eat, and could not do other things that I could normally do outside
20 the Solar Site while on the Access Road.

21 51. I was not paid for the drive time on the Access Road or the time I spent waiting in line to go
22 through and going through the Phase 2 Security Gate security process.

23 **THE MANDATORY SECURITY EXIT PROCESS**

24 52. I was told at the orientation that at the end of each workday after our work stop time, it was
25 CSI’s policy that to exit the Solar Site, all workers had to drive to the Phase 2 Security Gate
26 (where the security process occurred) on the Access Road and wait for their turn to go through
27 the exit security process at the Phase 2 Security Gate. We were told that when we were traveling
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1 from the parking lots to the Phase 2 Security Gate at the end of the day, we could not pass other
2 vehicles and had to wait in line for our turn to go through the exit security process, vehicle-by-
3 vehicle at the Phase 2 Security Gate. We were told that when a vehicle got to the front of the line
4 at the Phase 2 Security Gate at the end of the day, the vehicle was required to stop at the Phase 2
5 Security Gate (where the security process occurred) and wait until a security guard conducted the
6 exit security process. We were told that we were required to roll down our windows and present
7 our security identification badges for review and scanning by a security guard. We were told that
8 all drivers and passengers in a vehicle had to do the same thing. We were told that we workers
9 were not allowed to leave the Solar Site until we completed the exit security process at the Phase
10 2 Security Gate and the security guards allowed us to leave the Solar Site.

- 11 53. I was told at the Solar Site Orientation and in meetings that if a worker did not have his or her
12 security identification badge at the time that he or she wanted to exit the Solar Site through the
13 Phase 2 Security Gate (where the security process occurred), the worker could not exit the Solar
14 Site and had to pull out of line and go into the security guard shack at the Security Gate to be
15 released before being allowed to leave.
- 16 54. As I was going through the exit security process, I could see security guards looking inside my
17 vehicle and other vehicles through the windows. When I was riding with other people and when I
18 saw other vehicles with more than one person, I saw the security guards looking into the vehicles
19 to see how many people were in the vehicles and confirming that the identification badges
20 matched the people in the vehicles.
- 21 55. At the end of the day, the line waiting to get out of the Solar Site at the Phase 2 Security Gate
22 was even longer than the line to get into the Solar Site at the Security Gate at the beginning of
23 the day. This is because at the end of the day, hundreds of Solar Site workers would be leaving at
24 around the same time. The work stopping time for virtually all of the CSI workers was the same
25 and we were required to be off the Solar Site by a certain time. I observed and estimate that there
26 were many more than 50 vehicles leaving the Solar Site around the same time each workday.
27 Because of the number of vehicles leaving at once and because of the configuration of the Phase
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1 2 Security Gate, the time it took me to wait in line and go through the exit security process to
2 leave the Solar Site could be up to 20 minutes depending on where my vehicle was in line to exit.
3 Waiting in line to go through the exit security process occurred every day I worked there.

4 56. I estimate that it could take up to a minute or so per vehicle, depending on the number of
5 passengers, to go through the security exit process after we finished waiting in the long line. If a
6 van full of people were being scanned in, then the process could take several more minutes for
7 that vehicle alone.

8 57. At the Solar Site orientation and in meetings, I was told that it was CSI's policy that any workers
9 who arrived at the Phase 2 Security Gate and attempted to exit the Solar Site through the exit
10 security process too early at the end of the workday could be disciplined or terminated. I was
11 also told this by fellow co-workers who worked for CSI as well.

12 58. While I worked for CSI, I was told by other co-workers that certain workers did in fact arrive at
13 the Phase 2 Security Gate at the end of the workday and attempted to exit the Security Gate too
14 early and were terminated.

15 59. During the time that I was waiting in line to exit the Phase 2 Security Gate (where the security
16 process occurred) and while I was going through the exit security process, I felt that I was, and
17 was, under CSI's control because I was confined to and could not leave the Solar Site until I
18 went through the exit security process, I was required to follow policies, processes and rules
19 required by CSI to exit the Solar Site through the Phase 2 Security Gate, and because I was
20 restricted as to what I could and could not do while I waited in line for and went through the exit
21 security process and could not use the time effectively for my own purposes. For example, while
22 I was waiting in line and confined to the Solar Site and going through the exit security process,
23 there was nothing that I could do other than wait in the vehicle in which I was riding to complete
24 the process. For example, I could not do any of the following things: a) I could not pass any
25 vehicles ahead of me, b) I could not leave the Solar Site, c) I could not run any personal errands,
26 d) I could not leave to get something to eat, e) I could not perform any personal activities outside
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1 of my vehicle, f) I could not move my vehicle until the security guards had let vehicles ahead of
2 me, vehicle-by-vehicle, exit the Solar Site.

3 **MEAL BREAK LOCATION RULES**

4
5 60. I was told by CSI management and my foreman at worker meetings that CSI workers were
6 required to stay on the job during the entire workday from the beginning of the workday to the
7 end of the workday. I was told that workers were required to stay at our daily Installation Sites
8 during our meal periods. We were told that we workers were required to eat our lunches at our
9 daily Installation Solar Sites. I followed those instructions during meal periods and observed
10 other CSI workers follow those instructions during meal periods.

11 61. I was never paid for the time that I was on meal breaks.

12 I declare under penalty of perjury under the laws of California and the United States that
13 foregoing is true and correct.

14 Dated: March 18, 2021

Mark Garcia



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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself
and all others similarly situated and as a
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;
California Flats Solar, LLC, a Delaware Limited
Liability Company; CA Flats Solar 130, LLC, a
Delaware Limited Liability Company; CA Flats
Solar 150, LLC, a Delaware Limited Liability
Company; Cal Flats Solar CEI, LLC, a Delaware
Limited Liability Company; Cal Flats Solar
Holdco, LLC, a Delaware Limited Liability
Company; CSI Electrical Contractors, Inc.; Milco
National Constructors, Inc.; California
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF
CLASS ACTION**

**Plaintiff's Request for Judicial Notice in
Opposition to Defendant CSI Electrical
Contractors, Inc.'s 2nd Motion for Partial
Summary Judgment**

1 Pursuant to Rule 201 of the Federal Rules of Evidence, Plaintiff George Huerta requests that the
2 Court take judicial notice of the following documents:

- 3 1. Defendant Sachs Electric Company's Notice of Motion and Motion for Summary Judgment
4 (Case No. 5:17-CV-03778-BLF; Doc. # 40.) A true and correct copy is attached hereto as
5 ***Exhibit 1.***
- 6 2. Declaration of Daniel B. Chammas in Support of Defendant Sachs Electric Company's Motion
7 for Summary Judgment (Case No. 5:17-CV-03778-BLF; Doc. # 40-1.) A true and correct copy is
8 attached hereto as ***Exhibit 2.***
- 9 3. Declaration of Michael Rega in Support of Defendants' Motion for Summary Judgment (Case
10 No. 5:17-CV-03778-BLF; Doc. # 40-5.) A true and correct copy is attached hereto as ***Exhibit 3.***
- 11 4. Declaration of Justin Griffin in Opposition to Defendant Sachs Electric Company's Motion for
12 Summary Judgment (Case No. 5:17-CV-03778-BLF; Doc. # 50-2.) A true and correct copy is
13 attached hereto as ***Exhibit 4.***
- 14 5. Declaration of Kevin Manhart in Opposition to Defendant Sachs Electric Company's Motion for
15 Summary Judgment (Case No. 5:17-CV-03778-BLF; Doc. # 50-3.) A true and correct copy is
16 attached hereto as ***Exhibit 5.***
- 17 6. Declaration of Maria Jimenez in Opposition to Defendant Sachs Electric Company's Motion for
18 Summary Judgment (Case No. 5:17-CV-03778-BLF; Doc. #50-4.) A true and correct copy is
19 attached hereto as ***Exhibit 6.***
- 20 7. Declaration of Eric Manhart in Opposition to Defendant Sachs Electric Company's Motion for
21 Summary Judgment (Case No. 5:17-CV-03778-BLF; Doc. #50-5.) A true and correct copy is
22 attached hereto as ***Exhibit 7.***
- 23 8. Declaration of Mark Bundren in Opposition to Defendant Sachs Electric Company's Motion for
24 Summary Judgment (Case No. 5:17-CV-03778-BLF; Doc. #50-6.) A true and correct copy is
25 attached hereto as ***Exhibit 8.***
- 26
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1 9. Declaration of Francis Scott Lee Richmond, JR. in Opposition to Defendant Sachs Electric
2 Company's Motion for Summary Judgment (Case No. 5:17-CV-03778-BLF; Doc. #50-7.) A true
3 and correct copy is attached hereto as *Exhibit 9*.

4 10. Defendant Sachs Electric Company's Reply Brief in Support of its Motion for Summary
5 Judgment (Case No. 5:17-CV-03778-BLF; Doc. #72.) A true and correct copy is attached hereto
6 as *Exhibit 10*.

7 Federal Rule of Evidence 201 permits the Court to take judicial notice of "matters of public
8 record." (*MGIC Indem. Corp. v. Weisman* (9th Cir. 1986) 803 F.2d 500, 504.)

9 Dated: June 22, 2021

THE DION-KINDEM LAW FIRM

10
11 BY: /s PETER R. DION-KINDEM
12 PETER R. DION-KINDEM, P.C.
13 PETER R. DION-KINDEM
14 Attorney for Plaintiff George Huerta

Exhibit 1

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7 SACHS ELECTRIC COMPANY, INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 JUSTIN GRIFFIN, an individual, on behalf of
himself and all others similarly situated,

12 Plaintiff,

13 v.

14 SACHS ELECTRIC COMPANY, a Missouri
15 corporation; FIRST SOLAR, INC., a Delaware
16 corporation; CALIFORNIA FLATS SOLAR,
LLC, a Delaware Limited Liability Company;
and DOES 1 through 10,

17 Defendants.
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Case No. 17-cv-03778-BLF

**DEFENDANT SACHS ELECTRIC COMPANY'S
NOTICE OF MOTION AND MOTION FOR
SUMMARY JUDGMENT**

Date: Oct. 25, 2018
Time: 9:00 a.m.
Courtroom: 3

Action Filed: April 27, 2017
Removed: June 30, 2017

21 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

22 **PLEASE TAKE NOTICE** that on October 25, 2018, at 9:00 a.m., or as soon thereafter as the
23 matter may be heard, in Courtroom 3 of the United States District Court for the Northern District of
24 California, located at 280 South 1st Street, San Jose, CA 95113, the honorable Beth Labson Freeman
25 presiding, Defendant Sachs Electric Company (“Sachs”), pursuant to Federal Rules of Civil Procedure 56,
26 will and hereby does move for an order granting summary judgment in its favor and against Plaintiff Justin
27 Griffin (“Plaintiff”), or, in the alternative, for partial summary judgment as to each cause of action.
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1 **Issue No. 1:** Sachs is entitled to summary judgment in its favor and against Plaintiff as to Plaintiff’s
2 first cause of action for “failure to pay compensation due” because there is no genuine disputed issue of
3 material fact that the claim fails as a matter of law because Plaintiff is not entitled to compensation for
4 commuting time to the work site.

5 **Issue No. 2:** Sachs is entitled to summary judgment in its favor and against Plaintiff as to the Second,
6 Third, Fourth, Fifth, and Sixth Causes of Action because there is no genuine issue of material fact that
7 Plaintiffs’ Second, Third, Fourth Fifth, and Sixth Causes of Action fail as a matter of law because they are
8 entirely derivative of Plaintiff’s First Cause of Action.

9 **Issue No. 3:** Sachs is entitled to summary judgment in its favor and against Plaintiff as to Plaintiff’s
10 Seventh, Eighth, and Ninth Causes of Action because there is no genuine disputed issue of material fact that
11 Sachs’ legitimate and non-discriminatory reason to terminate Plaintiff was not pretext to terminate Plaintiff
12 based on his race or color.

13 This motion is based upon this notice of motion and motion, the accompanying memorandum of
14 points and authorities, the declarations of Daniel B. Chammas, Michael Rega, Mike Kinloch, Keith Hagan,
15 and Jose Torres in support of Sachs’ motion filed concurrently herewith, and the Proposed Order filed
16 concurrently herewith, along with all papers and pleadings filed by the parties herein, all papers lodged with
17 the Court, and upon any other oral or documentary evidence that may be timely presented prior to or at the
18 hearing of this motion.

19 Dated: May 29, 2018

FORD & HARRISON LLP

By: /s/ Daniel S. Chammas
Daniel B. Chammas
Attorneys for Defendant
SACHS ELECTRIC COMPANY, INC.

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1 **I. INTRODUCTION**

2 Employees are not entitled to compensation for all time that they are required to spend on an employer's
3 premises. For almost 75 years, it has been well settled that an employee who is required to report to work at a
4 certain time does not start getting paid as soon as they enter the employer's premises. In the case of *Anderson v.*
5 *Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), the United States Supreme Court held that "walking time" on an
6 employer's premises that was necessary for an employee to arrive at his work station before the start of his shift
7 and to leave from his work station after the end of his shift was, in fact, compensable under the Fair Labor Standards
8 Act ("FLSA"). The Court interpreted the FLSA to require compensation to employees for this "walking time"
9 because "it was necessary for them to be on the premises for some time prior and subsequent to the scheduled
10 working hours." *Id.*, at 690.

11 Six months after the decision, unions and employees filed more than 1,500 lawsuits seeking nearly \$6
12 billion in unpaid wages. Congress quickly amended the FLSA to make clear that "traveling" on the employer's
13 premises before and after work was not compensable, and California, almost as quickly, followed suit. California,
14 in fact, before the *Anderson* decision, defined "hours employed" as all time "an employee is required to be on the
15 employer's premises." Just after *Anderson*, however, California deleted this language from its current definition
16 of "hours worked," which now focuses on whether employer exerts control over an employee.

17 Following the post-*Anderson* amendments to both federal and state law, it is beyond dispute that
18 employees are required to enter their employer's premises and navigate to their time clocks or work stations
19 without compensation. No one would argue that an employee reporting to work gets paid as soon as his vehicle
20 turns on to his employer's driveway. It would be frivolous to argue that an employee on the way to her time clock
21 gets paid waiting for an elevator to take her to the 15th floor and walking down a long hallway. The rejection of
22 the *Anderson* rationale for paying workers for all time they need to spend on an employer's premises repudiates
23 any claim for such compensation.

24 Plaintiff Justin Griffin has filed a class action lawsuit that essentially seeks to revive the *Anderson* rationale
25 and demands unpaid wages because of how long it takes him to make his way across the property where he worked
26 for Defendant Sachs Electric Company, Inc. ("Sachs"). Plaintiff was employed to install solar panels for the
27 California Flats Solar Project ("Project"), which was located on 2,900 acres of Jack Ranch, a cattle ranch in Central
28 California that is approximately 72,000 acres itself. Plaintiff's primary claim is that he should be compensated for

1 the time it took him to drive from the entrance of the Project to the spot where he met his crew and began working.

2 As explained above, this is precisely the sort of time that employees are not paid for. At the entrance to
3 the Project, Plaintiff approaches a “guard shack,” rolls down his window, shows his badge to the attendant, the
4 badge is scanned, and he drives through. From that point, Plaintiff drives directly to a parking lot where he meets
5 his crew. Plaintiff never leaves his vehicle nor does he interact with his employer or any third party along the way.
6 The travel between the guard shack and the parking lot where Plaintiff meets his crew will be referred to in this
7 motion as “the Drive.”

8 Before work could begin on the Project, the Project needed to obtain a variety of permits from state,
9 county, and city agencies. Because of the location of the Project, an environmental impact report was drafted, and
10 biologists were hired to monitor work on the Project to “help minimize and fully mitigate or avoid the incidental
11 take of Covered Species, [and] minimiz[e] disturbance of Covered Species’ habitat.” The biologists determined
12 that the speed limit should be 20 miles per hour for the vast majority of the Drive, except for small stretches, which
13 should have a 5 miles per hour speed limit because of the presence of “kit fox zones.” Plaintiff estimates that the
14 Drive took him about 40-45 minutes each way. As a subcontractor working on the Project, Sachs was required to
15 instruct its employees to follow all laws, including speeding laws, on the Project.

16 Sachs was also required to make sure that its employees did not disturb the “biological buffers” that the
17 biologist devised as a condition of the permit to perform work on the Project. One such buffer is not disturbing
18 the habitats of animals on the Project. Accordingly, employees were not permitted to antagonize animals during
19 the Drive. Finally, because of the extreme drought conditions on the Project, smoking was limited to designated
20 locations on the project, and is banned everywhere else on the Project, including in vehicles on the Drive.

21 Plaintiff points to the speed limit, the ban on smoking, and the rules regarding not disturbing the animals’
22 habitat as Sachs’ “control” over him during the Drive, thus requiring compensation. But employees are never free
23 from rules when traveling on an employer’s premises. An employee, for example, can certainly be terminated for
24 speeding or driving unsafely in an employer’s parking lot before or after work, and an employer can impose safety
25 rules that employees must follow at all times while on the premises, whether or not they are being paid. Similarly,
26 employees are often told that they have to follow a certain pathway to get to their work stations, are not permitted
27 to run, may not loiter, may not socialize, solicit, litter, or use their cell phones while navigating through the
28 employer’s premises to clock in. Just as these every day, ordinary rules do not “control” an employee the moment

1 he or she crosses the threshold of an employer's property before beginning work, the rules that Plaintiff points to
2 also do not "control" him and require compensation while he travels on the Project before beginning and after
3 ending work.

4 Plaintiff also has brought a claim for race discrimination, but it is completely baseless. Plaintiff was
5 terminated for absenteeism. He worked only 6 shifts in 2017, and missed ½ of his scheduled shifts in that year.
6 Plaintiff alleges he was terminated because he is black, but he has absolutely no evidence of any discrimination.

7 Accordingly, Sachs is entitled to summary judgment because Plaintiff cannot raise a triable issue of fact
8 in connection with his discrimination claims or his claims for unpaid wages and other Labor Code violations based
9 on the alleged compensability of the Drive.

10 **II. STATEMENT OF FACTS**

11 **A. The Drive Begins At The Entrance To The Project And Takes Employees** 12 **Directly To Their Worksite**

13 Plaintiff worked at the Project installing solar panels. (Declaration of Daniel B. Chammas ["Chammas
14 Decl."], Ex. 1 (Plf.'s Dep. 20:4-12, 24:1-12.)) Plaintiff would normally be required to report to work at a parking
15 lot at 8:00 a.m. (*Id.*, 27:10-15; 30:4-13.) Plaintiff left for work from his house in his own vehicle by himself or
16 after getting picked up by other workers. (*Id.*, 23:12-15; 44:5-18.) Plaintiff chose to get gas, stop by the store, and
17 pick up lunch on the way to work. (*Id.*, 116:1-7.) There was also a private bus that picked workers up from a
18 meeting place, and drove workers to the Project. (*Id.*, 52:12-53:7.)

19 The Project is located on Jack Ranch, which is private property. (Declaration of Michael Rega ["Rega
20 Decl."], ¶ 2.) Every work day, Plaintiff entered the grounds of the Project at a guard shack at an entrance to Jack
21 Ranch. (Plf.'s Dep. 34:11-24.) Plaintiff's vehicle stopped at the guard shack and Plaintiff presented his badge for
22 the attendants to scan. (*Id.*, 34:11-24, 36:15-23.) Plaintiff never left his vehicle and never even turned his badge
23 over to the attendants. (*Id.*, 36:15-37:3, 37:10-16, 42:23-44:1.) Instead, Plaintiff at all times kept his badge on his
24 person, only presenting it to be scanned. (*Id.*, 37:4-13.) Sometimes Plaintiff drove himself to work, but more often
25 he participated in a carpool with 4 other employees. (*Id.*, 39:18-41:16.) Plaintiff admitted that, in addition to
26 driving himself or carpooling, he also could have taken a bus. (*Id.*, 52:5-14.)

27 After his badge was scanned, Plaintiff (either as a driver or a passenger) proceeded to drive directly to a
28 parking lot where he would meet with other employees to drive on a buggy to the location where he would begin

1 installing solar panels. (*Id.*, 30:4-31:2, 51:24-52:11, 58:2-10, 74:12-75:16; Rega Decl., ¶ 3.) Plaintiff was paid
 2 beginning at the point where he boarded the buggy. (Plf.'s Dep. 38:21-39:16, 73:4-7; Rega Decl., ¶ 4.)

3 Between the guard shack and the parking lot, Plaintiff traveled continuously for 12 miles. (Rega Decl., ¶
 4 3.) At no point during that trip did Plaintiff ever leave his vehicle or interact with any person outside the vehicle.
 5 (Plf.'s Dep. 45:24-46:9, 50:2-11.) Plaintiff testified that he usually spends approximately 40-45 minutes one way
 6 on the Drive. (*Id.*, 45:6-9, 71:2-5.) The Drive starts at the entrance to the Project, and continues on the grounds of
 7 the Project, ending at one of several parking lots on the Project. (Rega Decl., ¶ 3.)

8 **B. The Rules of the Project**

9 Because of the location of the Project, the California Department of Fish and Wildlife (“CDFW”) required
 10 a permit before work on the Project could begin. (Rega Decl., ¶ 5, Ex. A.) The CDFW imposed rules that had to
 11 be followed on the Project because of the presence of two endangered species: the San Joaquin Kit Fox and the
 12 California Tiger Salamander. (*Id.*) Under the California Endangered Species Act, an Incidental Take Permit
 13 (“ITP”) needed to be issued because of the effect on the endangered species that the Project was expected to have.
 14 (*Id.*)

15 The ITP required a biologist to monitor work on the Project to “help minimize and fully mitigate or avoid
 16 the incidental take of Covered Species, minimizing disturbance of Covered Species’ habitat.” (Rega Decl., ¶ 6;
 17 ITP, § 6.2.) The ITP further required “an education program for all persons employed or otherwise working in the
 18 Project Area before performing any work,” which “shall consist of a presentation from the Designated Biologist
 19 that includes a discussion of the biology and general behavior of the Covered Species, information about the
 20 distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its
 21 status pursuant to CESA including legal protection, recovery efforts, penalties for violations, and Project-specific
 22 protective measures described in this ITP.” (*Id.*, § 6.4.)

23 The ITP required the Project to “clearly delineate habitat of the Covered Species within the Project Area
 24 with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the
 25 disturbance of Covered Species' habitat.” (Rega Decl., ¶ 7; ITP, § 6.12.) The ITP also strictly set out the boundaries
 26 of the Project and the visitors’ access to the Project: “Project-related personnel shall access the Project Area using
 27 existing routes, or new routes identified in the Project Description and shall not cross Covered Species' habitat
 28 outside of or en route to the Project Area.” (*Id.*, § 6.13.) The ITP also required the restriction of “Project-related

1 vehicle traffic to established roads, staging, and parking areas,” and “**that vehicle speeds do not exceed 20 miles**
 2 **per hour to avoid Covered Species on or traversing the roads.**” (*Id.* [emphasis added].) At times, small
 3 portions of the Drive posted speed limits of 5 miles per hour because of the presence of “kit fox” zones. (Rega
 4 Decl., ¶ 8.)

5 In Sachs’ contract with the General Contractor, it was required to observe all of these rules and make sure
 6 its employees did as well. (Rega Decl., ¶ 10, Ex. B [Sachs’ Subcontract].) Sachs agreed “to comply with all
 7 biological buffers and conditions. These conditions will vary depending on location, species, and site observations.
 8 No buffer shall be crossed without [the GC’s] approval.” (Rega Decl., ¶ 10, Ex. B, Sachs Subcontract, Exh. 1, §
 9 22.) Sachs’ employees, in fact, “on their first day assigned to this Project, [were required to] attend a general
 10 project and safety orientation conducted by [the general contractor].” (*Id.*, Exh. 3A, § 2.1.)

11 **C. Plaintiff Is A Member Of A Union, Which Agreed In The Collective**
 12 **Bargaining Agreement That The Drive Would Not Be Compensable**

13 Throughout his time working on the Project, Plaintiff was a member of the International Brotherhood of
 14 Electrical Workers (“IBEW”). (Rega Decl., ¶ 11, Ex. C; Plf.’s Dep. 26:4-16.) Plaintiff worked under the IBEW
 15 Local 234 collective bargaining agreement, which designated as hours worked only those hours between when
 16 employees reported to work at the buggy and returned on the buggy at the end of their shift. (Rega Decl., ¶ 12,
 17 Ex. D [CBA, § 3.01].) The IBEW did not file a grievance on behalf of either Plaintiff himself or any other union
 18 member for unpaid wages in connection with the Drive. (Rega Decl., ¶ 13.)

19 **D. Plaintiff Was Terminated For Excessive Absenteeism**

20 On or about December 13, 2016, Plaintiff received a written warning for numerous performance problems,
 21 including failure to follow instructions and insubordination as reported by his coworkers and supervisors, and that
 22 Plaintiff had to be placed in another crew. (Rega Decl., ¶ 14, Ex. E; Declaration of Michael Kinloch [“Kinloch
 23 Decl.”], ¶¶ 4-6; Plf.’s Dep. 131:8-133:9, 134:22-136:6.) Shortly after receiving this write up, Plaintiff began
 24 missing work. (Rega Decl., ¶ 15; Kinloch Decl., ¶¶ 7-8.) Plaintiff was absent from work multiple times at the
 25 very start of 2017, including January 2, January 17, February 23, March 1, and March 2, and only showed up for
 26 work a total of six (6) days during that very time period; in sum, for the first quarter of 2017, Plaintiff only worked
 27 about half of the shifts he was scheduled to work. (Rega Decl., ¶ 15, Ex. F; Kinloch Decl., ¶ 8; Declaration of
 28 Keith Hagan [“Hagan Decl.”], ¶ 7.)

1 Plaintiff called out of work on March 1 and 2, but these absences were not considered by Sachs to be
 2 excused under Sachs' Attendance/Absenteeism Policy. (Rega Decl., ¶ 16, Exs. G-H; Kinloch Decl., ¶ 9; Hagan
 3 Decl., ¶ 8.) Plaintiff received a subsequent write up on March 3, 2017 when he returned to work, explaining
 4 Plaintiff was being disciplined for "not follow[ing] instructions," "insubordination," "leaving job without
 5 permission," "poor productivity," "no interest in working," "complaints from other crew members," and that there
 6 were "other write ups similar to this one." (Rega Decl., ¶ 17, Ex. H; Kinloch Decl., ¶ 9; Hagan Decl., ¶ 8; Plf.'s
 7 Dep. 137:12-138:9.) Plaintiff testified at deposition that he was absent from work on March 1, 2017 due to alleged
 8 illness (Plf.'s Dep. 106:7-22, 108:13-20), and that he was also absent from work on March 2, 2017 due to alleged
 9 car troubles (Plf.'s Dep. 106:23-107:16).

10 Plaintiff was terminated on March 3, 2017, and his Notice of Termination states that he was being
 11 terminated for "refus[ing] to work as directed" and "excessive absenteeism." (Rega Decl., ¶ 18, Ex. I; Kinloch
 12 Decl., ¶ 10; Hagan Decl., ¶ 9; Plf.'s Dep. 139:8-22.)

13 **III. THE DRIVE IS PART OF AN ORDINARY COMMUTE THAT IS NOT**
 14 **CONTROLLED BY SACHS**

15 Plaintiff controlled how he got to work. Sachs did not require him to take any particular mode of
 16 transportation to get to work. Plaintiff left from his house, made personal stops along the way, drove to the Project,
 17 presented his badge at the guard shack, and drove directly to the parking lot. California law makes clear that his
 18 ordinary commute is not compensable.

19 "California law governs an employee's wage entitlement for transportation and provides a rule for
 20 distinguishing 'compulsory travel time' from 'an ordinary commute.'" *McMaster v. Coca-Cola Bottling Co.*, 392
 21 F. Supp. 2d 1107, 1114 (N.D. Cal. 2005) (citing *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 579, n.2 (2000)).
 22 "The inquiry into 'compulsory travel time' turns on the level of control exerted by an employer over the employee,
 23 considering factual questions such as what activities an employee cannot engage in by traveling in company
 24 transportation." *McMaster*, 392 F. Supp. 2d at 1114. The California Supreme Court has made clear that where
 25 an employer compels an employee to travel to work in a certain way, such as on a bus, then the commute is
 26 compensable, but if an employee has an option about how he travels to work, then it is not compensable. *Morillion*,
 27 22 Cal. 4th at 595.

28 An employee, in fact, is not compensated for and is deemed to have a choice about the commute to work,

1 even if company transportation for part of the commute is the only practical or feasible choice for employees. *See*
2 *Overton v. Walt Disney*, 136 Cal. App. 4th 263, 272 (2006) (rejecting argument that “as a practical matter [Plaintiff
3 was] required to use an employer-provided shuttle because no alternative transportation [was] available or
4 feasible,” and finding that even though employee spends substantial time riding on Disney shuttle to get to time
5 clock, shuttle time is not compensable because it is optional); *Amalgamated Transit v. Long Beach Pub. Transp.*,
6 2009 Cal. App. Unpub. LEXIS 3669, *4, 15 (2009) (where bus drivers were required to report to a location where
7 their bus routes begin at the start of their shifts, but are effectively stranded when their bus routes end at a different
8 location than the starting point, bus drivers are not compensated for time spent riding on “relief buses” to get back
9 to the starting point where they had parked because those buses were still optional).

10 Here, Plaintiff acknowledges that a bus did take some employees on the Drive, but that he did not take the
11 bus, was not required to use the bus, and sometimes drove himself in his own vehicle, but more often participated
12 in carpool with 4 other employees. (Plf’s Dep. 39:18-41:16, 52:5-14.) In addition, if Plaintiff wanted a ride from
13 a third party, that person could have dropped Plaintiff off at the guard shack and Sachs would have arranged for
14 Plaintiff to have been brought down to the parking lot. (Rega Decl., ¶ 3; Plf.’s Dep. 53:8-54:11.) From the moment
15 that Plaintiff left his house, to the moment he arrived at the parking lot on the Project, Plaintiff did not leave his
16 vehicle, nor was he required to do anything at the request of Sachs.

17 Sachs, in fact, is not aware of any case where an employee drove his or her own vehicle to work directly
18 from home, and the employer was required to pay for any portion of it. This is especially true here, where the only
19 “stop” along the way occurred for only moments, where Plaintiff rolled down his window and presented his badge
20 to security to enter the Project. Plaintiff was required to do no more than flash his employee badge to the attendants
21 at a guard shack before he was permitted to pass by and drive to the parking lot. Plaintiff “held [his badge] up, and
22 they scanned it,” never even handing the badge to the people at the guard shack. (Plf.’s Dep., 36:20-37:16.)
23 Plaintiff, in fact, held his badge out the window, and the attendant would walk around the vehicle, if necessary, to
24 scan the employee in. (*Id.*, 43:4-44:1.)

25 The Drive, therefore, is not compensable because it is a continuation of an ordinary commute that started
26 at Plaintiff’s home and ends at the parking lot where Plaintiff began getting paid.

1 **IV. TIME SPENT TRAVELING ON AN EMPLOYER’S PREMISES, NO MATTER**
 2 **HOW SPRAWLING, BEFORE BEGINNING WORK OR AFTER ENDING**
 3 **WORK IS NOT COMPENSABLE EVEN IF THE EMPLOYEE IS REQUIRED TO**
 4 **FOLLOW CERTAIN RULES ON THE PREMISES**

5 Plaintiff contends that his otherwise ordinary commute from home in his own vehicle converts into
 6 compensable time the moment he enters the Project. California Wage Order 16, which governs the construction
 7 industry, provides that “[h]ours worked means the time during which an employee is subject to the control of an
 8 employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do
 9 so.” 8 CCR § 11160 § 2(J). Plaintiff’s action is based on the alleged control over him exerted by Sachs on the
 10 Drive. In his complaint, Plaintiff alleges that “[t]he first location where Defendants required Plaintiff and Class
 11 members’ presence was a security gate on the Project,” which “was the only way that Plaintiff and Class members
 12 could gain access to the Project.” (First Amended Complaint (“FAC”), ¶ 29.) According to Plaintiff, “[f]rom the
 13 time that Plaintiff and Class members badged in at this security gate until they badged out through the security gate
 14 at the end of their workday, they were under Defendants’ control and were restricted by Defendants’ rules,
 15 processes, procedures and supervision.” (*Id.*)

16 Plaintiff sees “control” in the need for employees to travel “along a route designated by Defendants, at a
 17 slow speed limit designated by Defendants, and using non-public roads controlled by Defendants and arrive by a
 18 specific time designated by Defendants.” (*Id.*, at ¶ 30.) According to Plaintiff, Defendants imposed the following
 19 rules on him during this drive: (1) follow the speed limit of 20 miles per hour (Plf.’s Dep., 47:23-48:10); (2) look
 20 out for and do not disturb the animals, and respect their habitat (*id.*, 48:15-49:21); (3) no smoking in the vehicle
 21 (*id.*, 63:20-64:9), and (4) no unauthorized visitors on the premises (*id.*, 53:8-54:18).

22 Whenever employees are on their employer’s premises, however, they are subject to rules and a code of
 23 conduct, even if they are not being paid. The rules cited by Plaintiff do not “control” him and entitle him to
 24 compensation for all time he spends on the Project. Plaintiff’s travel on the Project, therefore, is merely a
 25 continuation of the commute that is non-compensable.

26 **A. Travelling On An Employer’s Premises Before And After Work Is Generally**
 27 **Not Compensable, Even If It Requires Substantial Time**

28 Time clocks are often located in remote areas of an employer’s property. Merely because an employee
 crosses the threshold of an employer’s premises does not entitle him to be paid for every minute spent on those

1 premises. This is true even though he may spend dozens of minutes finding a parking space, walking to an elevator,
 2 navigating his way through other departments, and finding the time clock for his work area. No matter how much
 3 time this process takes, none of it is compensable.

4 Federal law used to compensate employees for exactly this time. Congress, however, amended the FLSA
 5 to exclude this type of travel on the premises. California followed suit, and removed from its definition of work
 6 all time that an employee is required to be on the premises. The core complaint of Plaintiff, therefore, that he was
 7 required to spend substantial amounts of time traveling on the Project before and after work without compensation
 8 is baseless.

9 **1. Federal Law Expressly Excludes As Wages Time Employees Spend**
 10 **Traveling On The Employer’s Premises Before The Start Of Work**
 11 **And After The End Of Work.**

12 In *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), the Supreme Court issued a decision that
 13 immediately spurred Congress to amend the FLSA to repeal the high court’s ruling. In *Anderson*, employees filed
 14 a collective action under the FLSA, for unpaid overtime for their work on a “plant [that] covers more than eight
 15 acres of ground and is about a quarter of a mile in length.” *Id.*, at 682. The employer did not compensate
 16 employees for dozens of minutes per day that constituted “walking time.” The Supreme Court interpreted the
 17 FLSA to require compensation for these employees because “it was necessary for them to be on the premises for
 18 some time prior and subsequent to the scheduled working hours.” *Id.*, at 690. The Court reasoned that “[s]ince
 19 the statutory workweek includes all time during which an employee is **necessarily required to be on the**
 20 **employer’s premises**, on duty or at a prescribed workplace, the time spent in these activities must be accorded
 21 appropriate compensation.” *Id.*, at 690-91 (emphasis added).

22 The Court found that “the time necessarily spent by the employees in walking to work on the employer’s
 23 premises...was working time within the scope of [the FLSA].” *Id.*, at 691. The Court reasoned that “[s]uch time
 24 was under the complete control of the employer, being dependent solely upon the physical arrangements which
 25 the employer made in the factory.” *Id.* “Those arrangements in this case compelled the employees to spend an
 26 estimated 2 to 12 minutes daily, if not more, in walking on the premises. **Without such walking on the part of**
 27 **the employees, the productive aims of the employer could not have been achieved.**” *Id.* (emphasis added).
 28 The Court held that “[t]he employees’ convenience and necessity, moreover, bore no relation whatever to this
 walking time; they walked on the employer’s premises only because they were compelled to do so by the

1 necessities of the employer's business. In that respect the walking time differed vitally from the time spent in
2 traveling from workers' homes to the factory." *Id.*

3 The Court concluded that "the time spent in walking to work on the employer's premises...involved
4 'physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued
5 necessarily and primarily for the benefit of the employer and his business. [Citations.] Work of that character
6 must be included in the statutory workweek and compensated accordingly, regardless of contrary custom or
7 contract." *Id.*, at 691-692.

8 Accordingly, the Supreme Court interpreted the FLSA to require payment for all time that the employee
9 needed to be on the premises, including time spent traveling on an employer's sprawling property before the start
10 of his or her shift. As the Supreme Court reflected in retrospect, the *Anderson* decision and others "provoked a
11 flood of litigation. In the six months following this Court's decision in *Anderson*, unions and employees filed
12 more than 1,500 lawsuits under the FLSA." *Integrity Staffing v. Busk*, 135 S. Ct. 513, 516 (2014). "These suits
13 sought nearly \$6 billion in back pay and liquidated damages for various preshift and postshift activities." *Id.*

14 "Congress responded swiftly." *Id.* "It found that the FLSA had 'been interpreted judicially in disregard
15 of long-established customs, practices, and contracts between employers and employees, thereby creating wholly
16 unexpected liabilities, immense in amount and retroactive in operation, upon employers.'" *Id.*, at 516-17 (quoting
17 29 U.S.C. § 251(a)). "Declaring the situation to be an 'emergency,' Congress found that, if such interpretations
18 were permitted to stand. . . the payment of such liabilities would bring about financial ruin of many employers"
19 and "employees would receive windfall payments . . . for activities performed by them without any expectation of
20 reward beyond that included in their agreed rates of pay." *Id.* at 517 (quoting 29 U.S.C. § 251(a)-(b)). "Congress
21 met this emergency with the Portal-to-Portal Act." *Id.* "The Portal-to-Portal Act exempted employers from
22 liability for future claims based on...walking, riding, or traveling to and from the actual place of performance of
23 the principal activity or activities which such employee is employed to perform." *Id.* (quoting 29 U.S.C. § 254(a)).

24 This amendment plainly declared time spent traveling on an employer's premises before and after work
25 to be non-compensable. For example, in *Ralph v. Tidewater Constr. Corp.*, 361 F.2d 806, 807-08 (4th Cir. 1966),
26 plaintiffs worked on the "construction of a bridge-tunnel [and a] project [that] consisted of vehicular bridges and
27 tunnels, 17.9 miles in length, spanning Chesapeake Bay where it meets the Atlantic Ocean." "The workers on this
28 enterprise, of course, had to have transportation from the shore to their places of work in the Bay. The time required

1 for this travel, at the beginning and end of the day, would vary from 15 minutes to an hour for each trip, depending
2 upon the location of the employee's work point, weather conditions and other factors.” *Id.*, at 808. The court held
3 that, under the Portal-to-Portal Act, this time traveling to the employees’ worksite was non-compensable. *Id.*, at
4 810. *See also IBP, Inc. v. Alvarez*, 546 U.S. 21, 41 (2005) (“[W]alking from a time clock near the factory gate to
5 a workstation is certainly necessary for employees to begin their work, but it is indisputable that the Portal-to-
6 Portal Act evinces Congress’ intent to repudiate *Anderson*’s holding that such walking time was compensable
7 under the FLSA. We discern no limiting principle that would allow us to conclude that the waiting time in dispute
8 here is a ‘principal activity’ under § 4(a), without also leading to the logical (but untenable) conclusion that the
9 walking time at issue in *Anderson* would be a ‘principal activity’ under § 4(a) and would thus be unaffected by the
10 Portal-to-Portal Act.”); *Felton v. Latchford Marble Glass Co.*, 77 F. Supp. 955, 956 (1948) (Portal to Portal Act
11 bars claims based on allegations that employees “were required to enter the plants through a single gate designated
12 by the defendant and are required to punch a time clock at a designated point on the premises of the defendant
13 prior to reporting to the place at which each plaintiff performs his regular duties. . . Compensation is requested for
14 the walking time from the gate to the time clock and upon the completion of their work after punching the time
15 clock, walking to the same gate for the purpose of checking out, necessitating plaintiffs being on defendant's
16 premises prior to starting hour and walking from the gate to the time clock and from the time clock to the gate at
17 the conclusion of their work.”); *Carter v. Panama Canal Co.*, 463 F.2d 1289, 1291, 1294 (D.C. Cir. 1972)
18 (rejecting claim for compensation for time spent walking “from [a] gate,” where employees “check[] an
19 assignment board,” “to the locomotive,” where “the walk to the locomotive can take as little as two minutes or as
20 much as fifteen minutes”).

21 Therefore, it is beyond dispute that Congress specifically rejected the notion that employees should be
22 compensated for time traveling on the employer’s premises both before and after their shifts. After the Portal-to-
23 Portal Act, employees cannot seek unpaid wages either for traveling great distances on the employer’s premises
24 to begin their work before the start of their shift, nor for traveling just as long after completing their duties.

1 **2. California Responded Just As Swiftly To Amend Its Laws In A Similar**
 2 **Way In Response To The *Anderson* Decision**

3 Before *Anderson*, California law compensated employees for “hours employed,” which was defined as
 4 “all times during which...an employee is **required to be on the employer’s premises**, or to be on duty, or to be
 5 at a prescribed work pace, [or all times] an employee is suffered or permitted to work whether or not required to
 6 do so. Such time includes, but shall not be limited to, waiting time.” Wage Orders, § 2 (emphasis added).¹ The
 7 decision in *Anderson* was issued on June 10, 1946, prompting Congress to amend the FLSA with the Portal-to-
 8 Portal Act on May 14, 1947. *Glenn v. Southern Cal. Edison*, 187 F.2d 318, 319 (9th Cir. 1951).

9 Just a few weeks later, on June 1, 1947, California abandoned the term “hours employed” and adopted the
 10 federal term, “hours worked.” In the 1947 amendment, the state removed the term “required to be on the
 11 employer’s premises,” and adopted a definition that provided that “‘Hours Worked’ means the time during which
 12 an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted
 13 to work, whether or not required to do so.” Cal. Code Regs., tit. 8, § 11140, Subd. 2(G).²

14 This deletion is particularly significant because the *Anderson* Court had held that “all time during which
 15 an employee is necessarily required to be on the employer’s premises...must be accorded appropriate
 16 compensation,” and proceeded to award employees compensation for time they spent “walking to work on the
 17 employer's premises” at the beginning and end of their shifts. *Anderson*, 328 U.S. at 690-92. Given Congress’
 18 express declaration after *Anderson* that “walking, riding, or traveling to and from the actual place of performance
 19 of the principal activity” that employee is employed to perform is not compensable, California’s removal of
 20 “required to be on the employer’s premises” from the definition of “hours employed” also shortly after *Anderson*
 21 and just after Congress acted is substantial evidence that California, like Congress, also rejected *Anderson*’s
 22 holding that traveling on the employer’s premises before and after work should be compensated.³

23 _____
 24 ¹ The pre-*Anderson* version of the relevant wage order is attached to the Chammas declaration as Exhibits 2, 4.

25 ² The June 1, 1947 amendment to the wage order is attached to the Chammas declaration as Exhibits 3, 4.

26 ³ In *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 591-92 (2000), the defendant argued that an employer
 27 compelled bus ride was not compensable because California law patterned itself after the Portal-to-Portal Act,
 28 which declared such commute time, even if required by the employer, noncompensable. The court, however,
 disagreed, and held that, in 1947, California had added that time under an employer’s “control” was compensable,
 meaning that employer mandated bus time must be paid for. As explained below, Plaintiff was not “controlled”
 on the Drive like the employees in *Morillion*, and, therefore, California law, after *Anderson*, should be interpreted
 in accordance with federal law in this narrow respect: uncontrolled travel on an employer’s premises before and

1 One California court, in fact, *Overton*, 136 Cal. App. 4th at 273, reflected on the non-compensability of
 2 “walking time.” As noted above, in *Overton*, the court rejected an employee’s claim for compensation riding a
 3 company bus from a distant parking lot to the time clock because it was optional. The court rejected the employee’s
 4 proposed “simple solution to [the] unfairness” of making employees spend so much uncompensated time traveling
 5 to the time clock—moving the time clock to the parking lot. *Id.* The court rejected this as a solution because
 6 “Disney would also end up paying **unnecessary compensation** to many of its employees [for] ‘walking
 7 time’ . . . before starting their shifts.” *Id.* (emphasis added).

8 Therefore, under California law, an employee’s travel on an employer’s premises before starting and after
 9 ending work is not compensable. Accordingly, because the Drive is travel on the Project before the start of work
 10 and after the end of work, the Drive, no matter how long, is, by its nature, non-compensable.

11 **B. The Drive Is Not Compensable Because Defendants Did Not Exert Control Over**
 12 **Plaintiff During The Drive And The Workday Had Not Otherwise Already Begun**

13 Against this statutory backdrop and general presumption against compensating employees for traveling
 14 on the employer’s premises before and after work, California will nevertheless compel compensation for such
 15 travel if the employer controls employees’ travel or if the travel is in the middle of the workday. The alleged
 16 “control,” however, that Plaintiff feels during the Drive is not the type of control that warrants compensation, and
 17 the Drive did not transpire after he had engaged in any work.

18 **1. Rules that an employee must respect while traveling on an employer’s premises**
before and after work is not “control” that makes that time compensable

19 Traveling on an employer’s premises before starting work **always** entails **some level of control**—an
 20 employee cannot do whatever he or she wants, an employee can do only one thing (report to work), and there are
 21 certain rules of conduct that do not follow an employee outside those premises. However, an employee’s mere
 22 presence at the work site does not automatically entitle him to compensation, even though the employee must obey
 23 many rules while on the premises. If the control that follows employees whenever they are present on an
 24 employer’s premises rendered such time compensable, then the *Anderson* Court’s pronouncement that all time
 25 that an employee is required to be on the premises must be paid would still be good law. Such a ruling would have
 26 a dramatic effect on workplaces throughout California, as every employee would have claims for daily time for
 27 every minute spent on an employer’s property before clocking in and after clocking out.

28 after work is noncompensable.

1 **a. Rules that follow employees in most workplaces**

2 As soon as an employee steps foot onto an employer’s premises there are almost always common sense
 3 rules that “control” the employee. An employee, for example, is likely not permitted to disturb other employees
 4 that are working, either by talking to them or otherwise interfering with their work. Employees may also have to
 5 follow dozens of rules on an employer’s premises, such as no smoking, no littering, no loitering, no talking to
 6 customers, no carrying weapons, no eating or drinking, no sleeping, no pets, and no disruptive noises. Employees
 7 walking on an employer’s premises have to follow rules regarding clothes that they can wear and whether or not
 8 they can carry bags. Employees likely have to follow rules regarding the pace they can travel (no running), and
 9 the mode they can travel (no bikes or roller skates). Employees certainly are restricted in their movement on an
 10 employer’s premises, as there are rules about areas they can and cannot enter, as well as rules regarding the
 11 pathways they must follow. Employees can often be subject to rules regarding no solicitation of others on
 12 employer’s premises. Cell phones may certainly be banned on an employer’s premises at all times, as well as rules
 13 regarding the presence of any third parties, including children.

14 The following examples illustrate this point:

- 15 • **Construction Worker.** A construction worker enters the job site and must make his way to the time
 16 clock on the other side of the project. Along the way, the worker must observe a variety of safety rules (such as
 17 no running), is told which areas he cannot pass through, may not touch a variety of objects and equipment, and is
 18 instructed not to disrupt other employees before arriving at the place at which he clocks in.
- 19 • **Usher.** An usher at a symphony enters the arena and is required to travel through the arena to get to his
 20 work area, where he clocks in and begins getting paid. The usher is required to observe a variety of rules while in
 21 the arena, such as not disturbing the symphony’s performance while making his way through the arena, no running,
 22 no talking, no loitering, and no use of cell phones.
- 23 • **Tour Guide.** A tour guide driving to work parks her car in the underground garage before reporting to
 24 work. While driving in the parking garage before the start of her shift, the tour guide will be terminated if she
 25 drives too fast or otherwise drives unsafely.

26 Despite the fact that employees can feel “controlled” by these rules and restrictions that their employer
 27 imposes on them, employees do not begin being compensated the moment that they step onto an employer’s
 28 property. Although employers always impose some rules and restrictions on any employees while they are on the

1 premises, this is simply not the type of control that warrants compensation. If it were, then employees would be
 2 entitled to compensation for all time while on an employer's premises, a standard that was deliberately removed
 3 from the definition of compensable time in California, and a rule that is rarely, if ever, followed in any industry
 4 and any job classification. Indeed, if this were true, **time clocks would never capture all compensable time**, as
 5 employees are necessarily required, as noted in *Anderson*, to spend some amount of time on the employer's
 6 premises before clocking in and after clocking out. Because employees are obviously not free to do as they please
 7 by virtue of the fact that they are on the employer's premises, this level of "control" simply cannot be sufficient to
 8 require compensation.

9 **b. Rules in highly regulated environments**

10 There is no reason that any of these common sense results should be any different in a highly regulated
 11 environment, such as an airport or a state park. Just because an employer's premises have unusual rules in light of
 12 the highly regulated environment involved, does not make this type of control any different. Settings with highly
 13 regulated premises that employees must travel through and with many rules that they must follow before beginning
 14 and after ending work include:

15 • **Airport.** A gate agent enters an airport and is required to travel through the terminal to get to his gate,
 16 where he clocks in and begins getting paid. The gate agent must travel through baggage claim and more than a
 17 dozen other gates to get to his time clock, all the while needing to observe the complex and far-reaching rules of
 18 an airport along the way.

19 • **Zoo.** A zookeeper enters the zoo's premises and is required to travel to the north part of the park to her
 20 work area, where she clocks in and begins getting paid. The zookeeper is required to travel through the south part
 21 of the park to get to her time clock, and, along the way, is not permitted to disturb, pet, play with, interact with, or
 22 feed the animals, is not permitted to run, is not allowed to interact with customers, and must observe all safety
 23 rules.

24 • **Hospital.** A nurse must go through several wings of the hospital in order to get to his work station and
 25 clock in. While going through the maternity department, the nurse has been told that he is not allowed to interact
 26 with the newborn babies or mothers, may not handle sterile equipment or medication, and must observe patient
 27 safety rules along his entire trip to the time clock.

28 • **Court.** A court clerk must wind her way through a courthouse before getting to her department on the

1 10th floor. On her way to the courtroom each morning she must pass by several other departments and
 2 administrative offices, with strict rules about what she cannot do, such as interrupting a court session, disrupting a
 3 filing window, and recording court proceedings.

4 In all of these cases, the same basic premise that emanated from the post-*Anderson* wage and hour laws
 5 on both the state and federal levels holds true: employees need not be paid while they are traveling on the
 6 employer's premises in order to begin the work day or leave after the work day is completed. Even if the employee
 7 is navigating and winding his way through premises that are extremely controlled and highly regulated, and even
 8 if the employee is subject to a long list of rules that he must follow along the way, wages are not earned by the
 9 employee from the moment that he steps foot on those premises. Thus, merely being on an employer's premises
 10 while subject to rules and a code of conduct cannot possibly make that time compensable.

11 **2. Rules that are prohibitory, rather than mandatory, in nature are**
 12 **permissible on the premises**

13 Obviously, some rules that an employee must follow while on the premises, even if the employee is on
 14 the way to a time clock, start the work day and require compensation. A rule, for example, requiring employees
 15 to don protective gear before entering the plant at the start of a shift can certainly start the work day. *See, e.g., IBP*
 16 *v. Alvarez*, 546 U.S. 21, 40 (2005) (“Because doffing gear that is ‘integral and indispensable’ to employees’ work
 17 is a ‘principal activity’ under the statute, the continuous workday rule mandates that time spent waiting to doff is
 18 not affected by the Portal-to-Portal Act and is instead covered by the FLSA.”). Rules, moreover, requiring
 19 employees to undergo a security check may also begin the work day. *See, e.g., Frlekin v. Apple*, 2017 Cal. LEXIS
 20 7496 (2017) (California Supreme Court certifying the question, “Is time spent on the employer’s premises waiting
 21 for, and undergoing, required exit searches of packages or bags voluntarily brought to work purely for personal
 22 convenience by employees compensable as ‘hours worked’”).

23 The difference, however, between rules requiring donning and doffing and submitting to security checks,
 24 on the one hand, and rules forbidding employees from smoking, using cell phones, or running, on the other hand,
 25 is that one set of rules requires the employees to take action, and the other set of rules prevents employees from
 26 taking action. This is akin to the difference between prohibitory injunctions and mandatory injunctions. *See, e.g.,*
 27 *Marlyn Nutraceuticals v. Mucos Pharma*, 571 F.3d 873, 878-79 (9th Cir. 2009) (“A preliminary injunction can
 28 take two forms. A prohibitory injunction prohibits a party from taking action. . . . A mandatory injunction ‘orders a

1 responsible party to take action.”).

2 A rule, therefore, mandating that employees traveling on the employer’s premises stop somewhere and
 3 pick up supplies may start the work day and require compensation from the point the employees stop. However,
 4 a rule forbidding employees while traveling on the employer’s premises from smoking will neither start the work
 5 day nor require compensation. Such a dichotomy makes perfect sense because mandatory rules, unlike prohibitory
 6 rules, constitute an intervention by the employer that disrupts the employee from traveling directly to the worksite
 7 to begin his work. The essence of the post-*Anderson* state and federal statutes rule that an employee’s entrance to
 8 an employer’s premises does not necessarily begin compensating him is preserved by this test. As long as an
 9 employee is proceeding, uninterrupted, directly to or from his work station at the beginning or end of the work
 10 day, then the time is noncompensable, even though the employee certainly is not free to do whatever he or she
 11 wants to on the premises during the travel, and even though the employee has to abide by workplace rules that
 12 arguably exert some level of control over him or her.

13 **3. The rules that Plaintiff had to follow on the Drive were prohibitory in**
 14 **nature and rendered the Drive ordinary travel on the premises prior**
 15 **to starting work and noncompensable**

16 Plaintiff does not dispute that, after passing the guard shack, he drove directly to the parking lot without
 17 stopping along the way. Plaintiff contends that, during the Drive, he had to follow exactly four rules: (1) follow
 18 the posted speed limit; (2) don’t disturb animals’ habitat; (3) no visitors on the property; and (4) no smoking.

19 First, and most importantly, all of these rules are prohibitory, and not mandatory; *i.e.*, none of these rules
 20 required Plaintiff to do anything, and none of them prevented Plaintiff from driving directly from the guard shack
 21 to the parking lot. Following a posted speed limit, not interfering with animals along way, not bringing visitors,
 22 and not smoking are rules that do not divert Plaintiff in any way from reaching the parking lot and do not impose
 23 any obligation on him. Accordingly, Plaintiff’s travel on the Project before beginning work and after ending work
 24 is ordinary, non-compensable time that both California and Congress specifically excluded from hours worked
 25 after the *Anderson* decision.

26 Second, each rule is analogous to ordinary rules on virtually every employer’s premises that employees
 27 must respect at all times, even when not getting paid. Since the Project is subject to the California Endangered
 28 Species Act, the speed limit was set by a designated biologist, and not by Defendants. This is exactly like an
 employer not permitting an employee to race his car through the employee parking lot on its premises.

1 Announcing a rule that employees must drive safely and not exceed a certain speed while driving on the
 2 employer's property **at all times**, even when not getting paid, is obviously commonsense. This is also analogous
 3 to rules or logistics that prevent employees from reaching a time clock as quickly as they otherwise could, such as
 4 a "no running" rule, or delays while waiting for an elevator, or a line that may form at a turnstile on work premises,
 5 all of which impede an employee's progress while making his way to a time clock before his shift.

6 The rule that Plaintiff could not disturb the habitat of animals in the area, by, for example, playing loud
 7 music, is also quite conventional. Any workplace with animals, such as a zoo, aquarium, or pet store, would not
 8 allow employees while traveling on the premises before clocking in or after clocking out to antagonize the animals.
 9 The Project was in the midst of the habitats of two endangered species, and Plaintiff's need to respect those habitats
 10 while on the premises but not being paid is nothing unusual. The state permit, in fact, and Sachs' contract with the
 11 general contractor require Sachs and all of its employees to maintain the "biological buffer" between them and the
 12 animals, which includes not disturbing their habitats while on the premises. (Rega Decl., ¶ 10, Ex. B, Sachs
 13 Subcontract, Exh. 1, § 22.)

14 The rule on the Project restricting third parties from entering or driving on the premises is also very typical.
 15 Workplaces often allow only employees or authorized visitors to enter. The rule against smoking is also nothing
 16 out of the ordinary. Airports, courthouses, and other employers have strict rules against smoking, except in
 17 designated areas. On the Project, as well, because of drought conditions and the risk of fires, smoking was
 18 permitted only in designated areas. (Rega Decl., ¶ 9; Plf.'s Dep. 63:9-24.)

19 Accordingly, the only rules that allegedly "controlled" Plaintiff did not require him to do anything, but
 20 rather were ordinary and commonsense rules regulating all individuals traveling on the Project, akin to rules that
 21 other employers require employees to follow at all times while traversing on their premises. Any "control" that
 22 can be perceived as emanating from these rules is simply not the type of control that requires compensation.

23 **4. The length of the Drive is irrelevant to the question of control**

24 Whether it takes an employee 5 minutes or 45 minutes to get to his or her work station after entering the
 25 employer's premises is irrelevant. It is the nature of the time spent and not its duration that determines whether
 26 the time is compensable. The employees in *Anderson* lost up to 24 minutes per day walking around the premises
 27 without being compensated. Just like an ordinary commute does not become compensable once it reaches a certain
 28 duration, neither does traveling on an employer's premises before beginning work just because it surpasses a

1 certain length. *See, e.g., Kavanagh v. Grand Union*, 192 F.3d 269, 273 (2nd Cir. 1999) (“time spent traveling to
2 the first job of the day and from the last job of the day, regardless of the length of that distance,” is not compensable
3 because “ordinary commuting is not compensable”).

4 The question is not how long has the employee spent traveling on the employer’s premises on his way to
5 a time clock, but rather has the employer exerted control over the employee requiring compensation. If the
6 prohibitory rules discussed above do not amount to control and trigger a pay obligation if it takes an employee
7 only 5 minutes to reach a time clock, then there is no reason that an employee suddenly becomes controlled and
8 must be compensated if it takes 45 minutes—**under the exact same rules**—to reach a time clock.

9 **5. Plaintiff’s stop at the guard shack at the beginning of the Drive does**
10 **not start the work day and is not an indicia of control**

11 Plaintiff must do no more than flash his employee badge to attendants at a guard shack before he can pass
12 by and drive to the parking lot, never even handing the badge to the people at the guard shack. (Plf.’s Dep., 36:20-
13 37:16.) Plaintiff, in fact, held his badge out the window, and the attendant would walk around the vehicle, if
14 necessary, to scan the employee in. (*Id.*, 43:4-44:3.) Nothing about this brief interaction either qualifies as control
15 that warrants compensation or begins the workday.

16 Plaintiff has suggested that this is analogous to a “security check,” where the employee has to turn over
17 bags or purses to the employer to be searched. Such a comparison, however, completely distorts the nature of the
18 brief encounter here. First, Plaintiff never leaves his vehicle at the guard shack, but merely holds up his badge
19 through the window to be scanned. Second, the encounter takes only seconds, as the attendant need merely scan
20 the badge that remained on Plaintiff’s person. (*Id.*, 36:21-37:12.) This encounter is much more analogous to an
21 employee rolling down a car window to take a ticket to enter a parking garage than a security check. The badging
22 in process can even be compared to an employee swiping a card or using a key to unlock a door to enter the
23 employer’s building before clocking in. Another apt analogy is an employee in a courthouse or sports arena who
24 flashes an employee identification card to bypass a security line that members of the public must go through. Such
25 an employee, on the way to a time clock, is not owed wages starting from the time he or she presented a badge to
26 security to circumvent the security line. In each of these cases, the employee, on his or her way to clock in, must
27 present something to his or her employer—either a badge, security card, or key—that notes the employee’s
28

1 presence on the premises but does not start the work day and is uncompensated.⁴

2 Therefore, Sachs is entitled to summary judgment in connection with Plaintiff's claims for unpaid
3 compensation in connection with the Drive.

4 **V. EVEN IF STOPPING AT THE GUARD SHACK IS CONSIDERED TO BE**
5 **"REPORTING" TO WORK, THE DRIVE STILL IS NOT COMPENSABLE BECAUSE**
6 **THE COLLECTIVE BARGAINING AGREEMENT EXPRESSLY DEEMS THE TIME**
7 **NON-COMPENSABLE**

8 Wage Order 16 provides that "[a]ll employer-mandated travel that occurs after the first location where the
9 employee's presence is required by the employer shall be compensated..." Cal. Code Regs., tit. 8, § 11040(5)(a).
10 In the FAC, Plaintiff alleges that the "security gate" is "[t]he first location where Defendants required [his]
11 presence." (FAC, ¶ 29.) But flashing a badge to security while in his vehicle is not reporting to a location where
12 an employee's presence is required. The interaction is too minimal and the fact that Plaintiff never leaves his
13 vehicle forecloses any chances of starting his workday at that point.

14 In addition, even if the drive by the guard shack could be construed as "the first location where the
15 employee's presence is required by the employer," there is an express exception in the wage order for union
16 employees. Wage Order 16 also provides that this provision regarding travel time "shall apply to any employees
17 covered by a valid collective bargaining agreement **unless the collective bargaining agreement expressly**
18 **provides otherwise.**" Cal. Code Regs., tit. 8, § 11040(5)(a) (emphasis added). Here, as noted above, the CBA
19 expressly provides for compensation only after reporting to a location between 8:00 a.m. (reporting time at the
20 parking lot) and 4:30 p.m. (employees' arrival at the parking lot after work). (Rega Decl., ¶ 12, Ex. C, CBA, §
21 3.01) In accordance with this express provision in the CBA, Plaintiff was not paid for the Drive, which Plaintiff
22 only did before 8:00 a.m. (Plf.'s Dep., 27:10-15; 30:4-13.)

23 **VI. PLAINTIFF WAS TERMINATED FOR A LEGITIMATE, NON-DISCRIMINATORY**
24 **REASON**

25 Plaintiff's claims for violation of FEHA, IIED, and wrongful termination in violation of public policy all
26 are based on a single allegation: that Plaintiff was mistreated and terminated because of his race. All of these
27 claims fail, however, as Plaintiff has no evidence that he was treated any differently because he is black.
28

⁴ As noted in the opposition to the motion for class certification, between 25 and 50 percent of employees in the putative class rode a bus voluntarily, **which did not stop at the guard shack at all**. Instead, this bus drove past the guard shack, without stopping, and dropped off the employees riding on it at the parking lot. There is no reason at all that employees who voluntarily elected to ride the bus should be compensated for the Drive, which more closely parallels an ordinary, non-compensable commute.

1 Under FEHA, the “*McDonnell Douglas* test” is used to analyze Plaintiff’s discrimination claim.
 2 *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *see also Guz v. Bechtel Nat’l, Inc.*, 24 Cal. 4th 317, 354
 3 (2000). Under this test, Plaintiff has the initial burden to establish a *prima facie* case of discrimination. *Id.* Plaintiff
 4 must at least show “actions taken by the employer from which one can infer, if such actions remain unexplained,
 5 that it is more likely than not that such actions were based on a prohibited discriminatory criterion.” *Id.* at 355. To
 6 make a *prima facie* case, Plaintiff must offer proof that (1) he was a member of a protected class, (2) he was
 7 performing competently in the position he held, (3) he suffered an adverse employment action, such as termination,
 8 and (4) some other circumstance that suggests discriminatory motive. *Id.*

9 If plaintiff establishes a *prima facie* case, the burden then shifts to the employer to rebut the presumption
 10 of discrimination by producing evidence that the employer took its actions for a legitimate, nondiscriminatory
 11 reason. *Scotch v. Art Inst. of Cal.-Orange County*, 173 Cal. App. 4th 986, 1004 (2009). If the employer meets
 12 this burden, the presumption of discrimination is disproved, and the plaintiff must then challenge the employer’s
 13 proffered reasons as pretext for discrimination or offer other evidence of a discriminatory motive. *Id.*

14 Even assuming that Plaintiff can make a *prima facie* case, Sachs is able to satisfy its burden of producing
 15 evidence that it terminated Plaintiff for a legitimate, non-discriminatory reason. The employer’s burden at this
 16 stage is minimal, as the employer need “simply explain what he has done or produce evidence of legitimate
 17 nondiscriminatory reasons.” *Keene State College v. Sweeney*, 439 U.S. 24, 25, fn. 1 (1978). “A reason is
 18 ‘legitimate’ if it is facially unrelated to prohibited bias, and which **if true**, would thus preclude a finding of
 19 discrimination.” *Reid v. Google*, 50 Cal. 4th 512, 520, n.2 (2010) (emphasis added). The employer’s reasons, if
 20 honestly believed and nondiscriminatory on their face, may preclude a finding of discrimination even if such
 21 reasons are “foolish or trivial or baseless.” *Villiarimo v. Aloha Island Air*, 281 F.3d 1054, 1063 (9th Cir. 2002).

22 Plaintiff received a written warning on December 13, 2016 explaining his numerous performance
 23 problems, including failure to follow instructions and insubordination as reported by his coworkers and
 24 supervisors, and that Plaintiff had to be placed in another crew. (Rega Decl., ¶ 14, Ex. E; Kinloch Decl., ¶ 4; Plf.’s
 25 Dep. 131:8-133:9, 134:22-136:6.) **After receiving that warning**, Plaintiff was absent from work multiple times
 26 at the very start of 2017, including January 2, January 17, February 23, March 1, and March 2, and only showed
 27 up for work a total of six (6) days during that very time period; in sum, for the first quarter of 2017, Plaintiff only
 28 worked about half of the shifts he was scheduled to work. (Rega Decl., ¶ 15, Ex. F; Kinloch Decl., ¶ 8.) As a

1 result, Plaintiff was terminated. On its face, this more than satisfies Sachs' minimal burden of producing evidence
2 establishing a legitimate, non-discriminatory reason for the termination.

3 Plaintiff's claim completely falls apart when searching for evidence of pretext. Under FEHA,
4 "circumstantial evidence of pretext must be **specific** and **substantial**." *Gianelli v. Home Depot, Inc.*, 694 Fed.
5 Appx. 538 (9th Cir. July 19, 2017) (emphasis added). To establish pretext, the plaintiff must establish both (a) that
6 the employer's articulated reason for its actions was, in fact, a pretext for discrimination; and (b) that illegal
7 discrimination was the "real reason" for the employer's conduct. *Guz*, 24 Cal.4th at 361.

8 Plaintiff has no evidence of pretext. Plaintiff has expressed three reasons for thinking that his race was a
9 factor in his termination: (1) he was often moved to the back of the buggy; (2) he was not allowed to be a "water
10 carrier"; and (3) on one occasion, he was mistaken by his supervisor for the other black employee on the Project.
11 None of these reasons, however, support any inference of racial discrimination, and certainly do not satisfy
12 Plaintiff's burden of producing specific and substantial evidence of pretext.

13 First, Plaintiff claims that he was required to give up the front seat on the buggy to a "white woman"
14 repeatedly. This, however, had nothing to do with his race. This female employee was actually more senior to
15 Plaintiff. (Plf.'s Dep. 170:7-12.) In addition, Plaintiff admits that this was the only woman on the entire crew.
16 (*Id.*, 99:19-100:10.) The fact that the foreman gave preferential treatment to the only woman on the entire crew
17 has more to do with gender preference rather than racial discrimination, even if she was white.

18 More importantly, Plaintiff admits that no one of any race was treated differently than he was in this regard;
19 *i.e.*, he conceded that everyone was required to yield the front seat to the woman worker. (*Id.*, 101:16-102:3.) As
20 Plaintiff put it, "Everybody else, they didn't really care about the front because they already knew what the
21 consequences would have been. If I get up there, I got to move, anyway, regardless, because she's going to be
22 right there regardless. So they never did get up front." (*Id.* at 101:16-25.) Plaintiff admitted that it was a preference
23 for her over **everyone**, not just him: "Because she always sat up front, or even if someone beat her to it, the
24 foreman was going to move us and put the white woman up front." (*Id.* at 102:18-23.)

25 Second, Sachs' alleged failure to assign Plaintiff to the position of "water carrier" also had nothing to do
26 with race. Plaintiff observed only "six or so" employees who were allowed to be water carriers. (*Id.* at 161:6-13.)
27 Plaintiff admits, however, that he never even asked to be a water carrier. (*Id.* at 172:7-9.) Plaintiff does not know
28 the reasons that the six individuals were permitted to be water carriers, or whether they asked to be water carriers.

1 (*Id.* at 161:14-17; 172:10-14.) Given that Plaintiff was one of several hundred employees in his position, the fact
2 that all but six employees were passed up and not selected to be water carriers is conclusive evidence that Plaintiff
3 was not singled out and passed over because of his race. (*Id.* at 161:23-162:24.)

4 Finally, Plaintiff’s allegation that his supervisor confused him with the only other black employee on the
5 project is also not evidence of race discrimination. This supervisor did not make any racist comments, but allegedly
6 just mistook another black employee for Plaintiff. (*Id.* at 164:24-166:7.) There is no suggestion that this was
7 anything more than an innocent mistake.

8 None of this evidence is specific or substantial to demonstrate that Sachs’ proffered termination reason
9 was a pretext for discrimination. Accordingly, all of Plaintiffs’ FEHA claims (along with his IIED claim and
10 wrongful termination in violation of public policy) are subject to summary judgment.

11 **VII. CONCLUSION**

12 For the foregoing reasons, Sachs’ motion should be granted.

13 Dated: May 29, 2018

FORD & HARRISON LLP

By: /s/ Daniel S. Chammas
Daniel B. Chammas
Attorneys for Defendant
SACHS ELECTRIC COMPANY, INC.

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Exhibit 2

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SACHS ELECTRIC COMPANY, INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 JUSTIN GRIFFIN, an individual, on behalf
12 of himself and all others similarly situated,

Case No. 17-cv-03778-BLF

13 Plaintiff,

14 v.

**DECLARATION OF DANIEL B. CHAMMAS
IN SUPPORT OF DEFENDANT SACHS
ELECTRIC COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

15 SACHS ELECTRIC COMPANY, a
Missouri corporation; FIRST SOLAR, INC.,
16 a Delaware corporation; CALIFORNIA
FLATS SOLAR, LLC, a Delaware Limited
17 Liability Company; and DOES 1 through 10,

Date: Oct. 25, 2018
Time: 9:00 a.m.
Courtroom: 3

18 Defendants.
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Action Filed: April 27, 2017
Removed: June 30, 2017

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DECLARATION OF DANIEL B. CHAMMAS

I, Daniel B. Chammas, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and before this Court, and am a Partner with the law firm of Ford & Harrison, LLP, attorneys of record for defendant Sachs Electric Company (“Sachs”). I am providing this declaration in support of Sachs’ Motion for Summary Judgment. I have personal knowledge of each of the matters set forth below and, if called as a witness could and would testify competently to each of them under oath.

2. Attached as **Exhibit 1** hereto is a true and correct copy of the relevant portions of the deposition transcript of Plaintiff Justin Griffin whom I deposed in this matter on December 4, 2017.

3. Attached as **Exhibit 2** hereto is a true and correct copy of the June 29, 1942 version of relevant Industrial Welfare Commission Wage Order pre-dating *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946).

4. Attached as **Exhibit 3** hereto is a true and correct copy of the June 1, 1947 amendment to the relevant Industrial Welfare Commission Wage Order.

5. Attached as **Exhibit 4** hereto is a true and correct copy of the Declaration of Jenny S. Lillge of Legislative Intent Service, Inc., California State Bar No. 265046, dated December 14, 2017, regarding the legislative intent and history of the Industrial Welfare Commission Orders.

I declare under penalty of perjury under the laws of the state of California and the United States of America that the foregoing is true and correct. Executed this 29th day of May, 2018, at Los Angeles, California.

/s/ Daniel B. Chammas
DANIEL B. CHAMMAS

EXHIBIT 1

**Justin Griffin vs. Sachs Electric Company, et
al.**

Griffin, Justin - Volume I

11/21/2017

Full-size Transcript

Prepared by:

Sommerhauser Reporting Services, Inc.

Monday, December 4, 2017



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1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4 JUSTIN GRIFFIN, an individual,) CASE NO.:
on behalf of himself and all) 5:17-cv-03778-BLF
5 others similarly situated,)
6 Plaintiff,) VOLUME I
) (Pages 1 - 237)
7 vs.)
8 SACHS ELECTRIC COMPANY, a)
Missouri corporation; FIRST)
9 SOLAR, INC., a Delaware)
corporation; CALIFORNIA FLATS)
10 SOLAR, LLC, a Delaware Limited)
Liability Company; and)
11 DOES 1 through 10,)
12 Defendants.)
_____)
13

14 VIDEO DEPOSITION OF JUSTIN ANTHONY GRIFFIN

15 Tuesday, November 21, 2017

16 Los Angeles, California
17

18 Reported By:
Jan M. Roper
19 RPR, CSR No. 5705

20 Job No.: 2278
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1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4 JUSTIN GRIFFIN, an individual,) CASE NO.:
on behalf of himself and all) 5:17-cv-03778-BLF
5 others similarly situated,)
)
6 Plaintiff,)
)
7 vs.)
)
8 SACHS ELECTRIC COMPANY, a)
Missouri corporation; FIRST)
9 SOLAR, INC., a Delaware)
corporation; CALIFORNIA FLATS)
10 SOLAR, LLC, a Delaware Limited)
Liability Company; and)
11 DOES 1 through 10,)
)
12 Defendants.)
)
_____)
13

14 Video Deposition of JUSTIN ANTHONY GRIFFIN,
15 taken on behalf of Defendants Sachs Electric Company,
16 First Solar, Inc., and California Flats Solar, LLC,
17 at 350 South Grand Avenue, Suite 2300, Los Angeles,
18 California, commencing at 10:07 a.m., and ending at
19 4:58 p.m., on Tuesday, November 21, 2017, before Jan M.
20 Roper, RPR, CSR No. 5705.
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ALSO PRESENT:

VANESSA M. ZARATE-BLANCHARD
THE BLANCHARD LAW GROUP, APC

MICHELLE BARTFAY, Videographer
SOMMERHAUSER REPORTING SERVICES

1 Exhibit 1.

2 And have you ever seen this document before?

3 A. Yes.

4 Q. It has the heading on it IBEW Local Union 234
5 Job Referral Slip. It has the name Justin Griffin,
6 and it says Employer: Sachs Electric Company, and it
7 says Start Date: November 10, 2016.

8 Does that refresh your recollection of when
9 you started on the project?

10 A. Yes.

11 Q. Was that date November 10?

12 A. Yes, now that I see. But I knew it was 2016.

13 Q. Okay. And then Jose Torres -- it says
14 Foreman: Jose Torres.

15 Was that your direct supervisor when you
16 started?

17 A. No.

18 Q. Was he -- was he in your chain of command
19 when you started in November 2016?

20 A. Yes.

21 Q. So was there someone below him -- between you
22 and him when you started?

23 A. Yes.

24 Q. Who was between you -- Jose and you when you
25 started, if you remember?

1 A. Yes.

2 Q. When you -- so did you -- so take me through
3 a typical day when you started working.

4 When you got to the work site, what did you
5 typically do for the -- for the day?

6 MR. BLANCHARD: Ambiguous as to what you mean
7 by getting to the work site. You mean when he started
8 installing panels or when he entered the facility or
9 what -- what are you -- got to the facility, what are
10 you talking about?

11 BY MR. CHAMMAS:

12 Q. Did you drive to work?

13 A. Yes.

14 Q. Did you take your own car?

15 A. Yes.

16 Q. Did you park your vehicle at some point on
17 the -- at the project?

18 A. Yes.

19 Q. You got out of your car?

20 A. Can you repeat yourself.

21 Q. You got out of your car after you parked?

22 A. Yes.

23 Q. And then you went somewhere on the project;
24 correct?

25 A. Yes.

1 Q. And then when you -- did you get to some
2 point where you started installing solar panels?

3 A. Yes.

4 Q. Is that you what did for most of the day of
5 your workday?

6 A. Yes.

7 Q. And is that the entire time that you worked
8 at Sachs?

9 A. Yes.

10 Q. Did you work alongside other people who were
11 installing solar panels?

12 A. Yes.

13 Q. How many people were in your immediate area
14 when you were installing these solar panels?

15 MR. BLANCHARD: Ambiguous as to what
16 "immediate area" means.

17 BY MR. CHAMMAS:

18 Q. Like, how many people could you see, if you
19 looked around, installing solar panels?

20 MR. BLANCHARD: Compound.

21 THE WITNESS: Like 40 to 60 people.

22 BY MR. CHAMMAS:

23 Q. Okay. And then were there supervisors
24 walking around at the time during your workday?

25 A. Yes.

1 A. Yes.

2 Q. Did it ever change?

3 A. No.

4 Q. You were part of a union?

5 A. Yes.

6 Q. And this is the union on Exhibit 1, the IBEW

7 Local Union 234? Is that your union at the time?

8 A. Yes.

9 Q. When did you start with that one? Did you
10 become a member of that union, do you remember?

11 A. In 2016.

12 Q. Did you -- was this the first job that this
13 union put you on?

14 A. Yes.

15 Q. Are you still a member of that union?

16 A. Yes.

17 Q. Has that union put you on other jobs since
18 Sachs?

19 A. Yes.

20 Q. How many other jobs has this union put you on
21 besides Sachs -- or after Sachs?

22 A. One.

23 Q. Which one was that?

24 A. CSI.

25 Q. When you started, did you have a schedule --

1 a work schedule?

2 A. Yes.

3 Q. What was the schedule when you started?

4 A. I believe it was 8:00 to 5:00.

5 Q. 8:00 a.m. to 5:00 p.m.?

6 A. p.m., uh-huh.

7 Q. And was there a -- was there a certain number
8 of days per week that you were scheduled for?

9 A. Monday through Saturday.

10 Q. How did you know that was your schedule? Did
11 you receive a paper saying that?

12 A. The foremens told us.

13 Q. Told you to -- that your schedule was 8:00 to
14 5:00 Monday through Saturday; is that correct?

15 A. Yes.

16 Q. Did they -- did you have a meeting with your
17 foremen in the beginning of your employment?

18 A. Yes.

19 Q. That's when they told you what your schedule
20 was?

21 A. Yes.

22 Q. Did they say anything else about your
23 schedule?

24 A. They said that it could end because it's just
25 overtime for the time being.

1 THE WITNESS: Be to work before 8:00. 8:00
2 is my starting time.
3 BY MR. CHAMMAS:

4 Q. Okay. So 8:00 a.m. is your starting time is
5 what you understood that to mean; correct?

6 A. Yes.

7 Q. And so where did you try to get to by
8 eight o'clock?

9 A. To the parking area in the buggies.

10 Q. So you understood that you were supposed to
11 arrive at a parking area where the buggies were by
12 8:00 a.m. every day?

13 A. Yes.

14 Q. And then once you got there by 8:00 a.m.,
15 what would happen?

16 A. We'd park the vehicles and jump in the
17 buggies and head off to work.

18 Q. And you would typically get in the buggies at
19 8:00 a.m.?

20 A. Yes.

21 Q. At least that's what you were supposed to do;
22 right? That was your understanding of the work rule;
23 correct?

24 A. Yes.

25 Q. And then the buggies took you to your -- the

1 place where you would install solar panels?

2 A. Yes.

3 Q. And that's what you would do for most of the
4 day; correct?

5 A. Yes.

6 Q. And at the end of the day, what would you do?
7 Would you get back on a buggy?

8 A. Yes.

9 Q. And they would drive you back to the parking
10 lot?

11 A. Yes.

12 Q. And then you would drive home; correct?

13 A. Yes.

14 Q. What time did you typically get on the
15 buggies to leave the place you were installing panels?
16 You said the schedule was 8:00 to 5:00. So what did
17 it mean to you -- or how did it work out typically in
18 terms of what time you'd get on the buggy?

19 MR. BLANCHARD: That's compound and
20 ambiguous.

21 THE WITNESS: Between 4:40 and 4:45.

22 BY MR. CHAMMAS:

23 Q. So between 4:40 and 4:45 would be the time
24 that you would get on the buggy and be driven to your
25 car; correct?

1 is that correct?

2 A. Yes.

3 Q. Do you know how often it was less than 30
4 minutes throughout your employment?

5 A. No.

6 Q. Do you remember if it was most of the time or
7 not most of the time it was less than 30 minutes?

8 A. Periodically.

9 Q. Does that mean less than half the time?

10 A. Yes.

11 Q. How did you -- or did you keep track of time
12 at the project in terms of did you punch in or punch
13 out with a timecard?

14 A. Yes.

15 Q. Can you describe how you did that?

16 A. Every morning we would pull up, and First
17 Solar people would be right there, and they would
18 badge us in.

19 Q. So this is what I've been calling -- I think
20 maybe other people have been calling it a guard shack.

21 Is that like when you drive in, there's a
22 place where there's security, and that's when you kind
23 of present your badge? Is that correct?

24 A. Yes.

25 Q. And you mentioned that it was First Solar who

1 that they were connected to First Solar besides their
2 uniform?

3 A. Yes.

4 Q. What else?

5 A. Upper management. The guys you've never
6 seen, but they just stayed in the office, but they
7 were First Solar as well.

8 Q. Who are these people?

9 A. Like, general foremens, superintendents.

10 Q. And how do you know they were connected to
11 First Solar?

12 A. Because they rode around in the trucks that
13 said First Solar and wore their hard hats and the
14 vests that said First Solar.

15 Q. So just sticking to the guard shack and the
16 people in the guard shack, those people, your belief
17 that they were connected to First Solar sounds like
18 it's because of their uniform; is that correct?

19 A. Yes.

20 Q. So when you got to the guard shack, what did
21 you do? Did you present a badge to them -- to the
22 people in the guard shack?

23 A. Yes.

24 Q. And what did they do with it? Did you hand
25 it to them, or did you just show it to them?

1 A. Held it up, and they scanned it.

2 Q. They scanned it?

3 A. Badged us in -- in and out.

4 Q. So did you ever give it to them, the badge?

5 A. No. We keep it on our person --

6 We're out in the field.

7 Q. So it was around your neck?

8 A. -- so we can be identified or in our pocket

9 showing.

10 Q. Okay. And then you would hold it up -- on
11 your person you would hold it up to the person in the
12 guard shack, and they would scan it; correct?

13 A. Yes.

14 Q. And that was your typical course throughout
15 your employment -- course of conduct; correct?

16 A. Yes.

17 Q. Besides that scanning that happens at the
18 guard shack, is there any other way that you -- that
19 you personally record a time or told anyone on the
20 project about what time you were starting?

21 MR. BLANCHARD: That's ambiguous and
22 compound.

23 But you can answer.

24 THE WITNESS: Me and the group of guys were
25 all together, and we recorded our times on paper.

1 BY MR. CHAMMAS:

2 Q. Did you turn that in to anyone?

3 A. No. I lost mine.

4 Q. Okay. Did you ever give that to your -- to
5 Sachs or anyone at Sachs?

6 A. No.

7 Q. Is there any other way that you told Sachs or
8 anyone on the project the time that you started
9 working -- or that you got there --

10 MR. BLANCHARD: Ambiguous.

11 BY MR. CHAMMAS:

12 Q. -- besides the badging-in that you described?

13 MR. BLANCHARD: Ambiguous. Compound.

14 THE WITNESS: No.

15 BY MR. CHAMMAS:

16 Q. Did you have any awareness if anyone on the
17 project recorded the time that you arrived or started
18 work in any other way besides the badging process that
19 you described?

20 A. No.

21 Q. Do you know -- but you understand that you
22 weren't paid for the time that you drove past the
23 guard shack to the parking lot; correct?

24 A. Yes.

25 Q. So what they actually paid you -- do you have

1 any idea how Sachs knew how much to pay you?

2 MR. BLANCHARD: Calls for speculation. Lacks
3 foundation.

4 THE WITNESS: No.

5 BY MR. CHAMMAS:

6 Q. Did they pay you your schedule, what you were
7 supposed to work, as far as you know?

8 MR. BLANCHARD: Calls for speculation. Lacks
9 foundation.

10 THE WITNESS: Yes.

11 BY MR. CHAMMAS:

12 Q. So if you were set to work from 8:00 to 5:00,
13 then you were paid -- would it have been 9 hours minus
14 a 30-minute break? Is that your understanding?

15 MR. BLANCHARD: Compound.

16 THE WITNESS: Yes.

17 BY MR. CHAMMAS:

18 Q. What kind of car did you drive to the
19 project?

20 A. Different cars.

21 Q. Did you own a car at the time?

22 A. Yes.

23 Q. Did you ever drive that car to the project?

24 A. Yes.

25 Q. Did you only own one car, or did you own

1 multiple vehicles?

2 A. One vehicle.

3 Q. What was the -- what type of vehicle did you
4 own?

5 A. A Chevy Impala.

6 Q. And sometimes you drove that car to the
7 project; correct?

8 A. Yes.

9 Q. Did you ever drive a different car to the
10 project?

11 A. I didn't drive, but people I carpooled with
12 did.

13 Q. Right. So you would have been a passenger in
14 other vehicles as -- as you traveled to the project;
15 correct?

16 A. Yes.

17 Q. Did you have -- how many people -- different
18 people do you think you carpooled with each day or
19 throughout your time at -- on the project? How many
20 people -- different people do you think you carpooled
21 with?

22 A. About five people.

23 Q. At various times sometimes -- always -- ever
24 together? So five plus you; correct?

25 MR. BLANCHARD: Compound.

1 THE WITNESS: No.

2 BY MR. CHAMMAS:

3 Q. Is it five including you, or is it you plus
4 five different people? I don't mean at the same time.
5 Right now I'm just trying to get an idea, throughout
6 your employment, the different people that you've ever
7 carpooled with.

8 And you're saying there are about five people
9 plus you; is that correct?

10 A. Five individuals that I carpooled with.

11 Q. Right. And over the course of your
12 employment, would you say that you carpooled less than
13 half the time or more than half the time?

14 A. More.

15 Q. More than half the time; correct?

16 A. Yes.

17 Q. So would you say that you -- let me ask you
18 this: Why did you carpool?

19 A. Some guys have little, small compact cars,
20 gas savers. So 20, 30 bucks in get us there for two,
21 three days, and we all save money perhaps [sic] going
22 in a vehicle that drinks gas every day that you have
23 to keep filling up.

24 Q. How many different cars would you say that
25 you were in on -- driving to work, besides your

1 Impala? That's one. Besides that one car, how many
2 other cars do you think you were in?

3 A. Two others.

4 Q. Two others. Were there two drivers -- the
5 same driver for each of those two different cars every
6 time you were in it?

7 A. One driver, three or four bodies.

8 Q. Yeah. But so the two different vehicles --
9 did one of the vehicles always have the same driver,
10 and the other vehicle always have a different driver?

11 A. Yes.

12 Q. Do you know the name of those two people --
13 the names of those two people?

14 A. Yes.

15 Q. Could you tell me them to me, please.

16 A. Michael.

17 Q. And last name?

18 A. I don't know his last name. I forgot it.

19 Q. How about the other driver?

20 A. Robert.

21 Q. Do you know his last name?

22 A. Holmes.

23 Q. And when you all were -- when you were
24 carpooling and you pulled up to the guard shack, would
25 you all present your badge to be scanned in?

1 A. Yes.

2 Q. The same way you described before?

3 A. Yes.

4 Q. So if you had -- so would the person at the
5 guard shack move around the car to access everyone's
6 badges, or would you take them off and pass them up to
7 him?

8 A. We hold them out the window. He's already
9 right there. He just scan us. They got two First
10 Solar people badging people in on both sides, this
11 side and that side. Because you might have guys on
12 the passenger side in front and the back; you know,
13 the guy that's driving, and the guy that's in the
14 back.

15 Q. So were there two guard shacks on either side
16 of your car?

17 A. No.

18 Q. Okay. So would the personnel in the guard
19 shack -- would they walk around the vehicle to get the
20 people on the passenger side?

21 A. The driver's side but not the passenger.

22 Q. Okay. So the driver's side; correct?

23 A. Yes.

24 Q. In other words, one side of the car they'd
25 have to move around to access those badges; correct?

1 A. Yes.

2 MR. BLANCHARD: That mischaracterizes his
3 testimony.

4 BY MR. CHAMMAS:

5 Q. When you carpooled, how did you get picked up
6 from your house?

7 A. They came and got me.

8 Q. Okay. You didn't drive to someone else's
9 house and get in there? You would get picked up from
10 your house normally; correct?

11 A. No.

12 Q. What would happen normally for you to get in
13 the vehicle from your house when you're carpooling?

14 A. They pull up, and I get in, and we go to
15 work.

16 Q. Right. So they would pick you up normally
17 from your house; correct?

18 A. Yes.

19 Q. And typically would you go from your house to
20 get somebody else, or would you go straight from your
21 house to the project when you carpooled?

22 A. Everyone was already in the vehicle.

23 Q. When you carpooled; correct?

24 A. Yes.

25 Q. So how long did it normally take to get

1 between your house and the guard shack?

2 A. It's like an hour and 20-minute drive.

3 Q. You're saying it's one hour and 20 minutes
4 between your house and the guard shack?

5 A. Yes.

6 Q. And then after you got to the guard shack,
7 how long would it typically take to drive between the
8 guard shack and the parking lot?

9 A. It would take approximately 40 to 45 minutes.

10 Q. Okay. Were there any rules about the drive
11 that you were aware of? Like work rules?

12 A. Yes.

13 MR. DION-KINDEM: Which drive?

14 MR. CHAMMAS: The drive from his house to the
15 parking lot.

16 Q. You said yes; correct?

17 MR. BLANCHARD: From his house to the parking
18 lot?

19 MR. DION-KINDEM: Or you mean from the guard
20 shack?

21 MR. CHAMMAS: I mean from his house. If
22 there's nothing from his house to the guard shack,
23 that's fine.

24 Q. But I want to know the entire commute from
25 your house to the parking lot, were there any rules

1 that you were aware of that your employer put on that
2 drive. And you said yes; correct?

3 A. Yes.

4 Q. What were the rules that you're referring to?

5 A. The rules were that it was a controlled
6 environment. We had to follow the rules of the
7 speeding law, the environmental of the animals, and
8 that we couldn't go anywhere but to our destination to
9 get to those buggies and get to work.

10 Q. How did you learn about those rules?

11 A. First Solar and Sachs orientation.

12 Q. So after you were hired, that you -- you went
13 to an orientation?

14 A. Yes.

15 Q. And at the orientation who was speaking when
16 they told you these rules?

17 A. Both parties: First Solar and Sachs.

18 Q. How do you know that the person was from
19 First Solar who made the comments?

20 A. The uniform identified them as First Solar
21 and Sachs.

22 Q. So any other reason that you had to believe
23 it was First Solar people speaking, besides the
24 uniform, at the orientation?

25 A. Yes.

1 Q. What other reason did you have?

2 A. They said that they were First Solar, and the
3 other company said that they were Sachs.

4 Q. So the person speaking with the First Solar
5 uniform said, "I'm from First Solar"; is that what
6 your testimony is?

7 A. Yes.

8 Q. Okay. And so are you able to remember which
9 rules about the drive came -- were said by Sachs and
10 which rules about the drive were said by First Solar?

11 A. They both mentioned the same.

12 Q. Okay. So at various times they both
13 mentioned these rules; correct?

14 A. Yes.

15 Q. Okay. So I think you first said one of the
16 rules was -- you called it a speeding law.

17 Can you remember the words that were said by
18 either or both the First Solar and Sachs people about
19 the speeding law?

20 MR. BLANCHARD: Compound.

21 THE WITNESS: No.

22 BY MR. CHAMMAS:

23 Q. What did you understand that to mean, the
24 speeding law? You have to follow the speed limit?

25 A. That, and it was just 20 miles an hour. No

1 more, no less on a dirt road.

2 Q. Follow the posted speed limit; correct?

3 A. Yes.

4 Q. Anything else?

5 MR. BLANCHARD: Mischaracterizes his
6 testimony.

7 BY MR. CHAMMAS:

8 Q. Is it correct that they told you -- you
9 understood it would be follow the posted speed limit?

10 A. Yes.

11 Q. Another rule that you mentioned, there were
12 environment -- environment rules I think you said; is
13 that correct?

14 A. Yes.

15 Q. What did you -- can you remember everything
16 said by either First Solar or Sachs about these
17 environment rules?

18 A. That we have animals on the property, so be
19 aware of the animals and look out for the animals, and
20 follow the rules and the guidelines of the speed
21 limits around here.

22 Q. Right. We talked about the speed limits;
23 right?

24 A. Yes.

25 Q. So besides the speed limit, they also had

1 rules about animals?

2 A. Yes.

3 Q. And you understood the rules to be -- or you
4 understand -- you remember them telling you -- people
5 from either Sachs or First Solar telling you that
6 there were animals on the property; correct?

7 A. Yes.

8 Q. And that you should be on the lookout for
9 animals; correct?

10 A. Yes.

11 Q. Anything else about animals that was said to
12 you about the rules -- about the drive?

13 A. Yes.

14 Q. What else was said about animals on the
15 drive?

16 A. Don't feed them.

17 Q. Anything else about rules about the drive --

18 A. Respect their habitat.

19 Q. -- about the animals?

20 And you said respect the habitat?

21 A. Yes.

22 Q. Anything else? Any other rules about the
23 animals and the drive that you remember from
24 orientation or anytime during your employment at First
25 Solar?

1 A. No.

2 Q. Okay. I think the last rule you mentioned --
3 or last subject you mentioned about rules was you
4 couldn't go anywhere but your destination.

5 Do you remember saying that?

6 A. Yes.

7 Q. What did you -- what's everything you
8 remember about anything said by either Sachs or First
9 Solar that related to that rule?

10 A. That we had to get straight to the buggies at
11 a specific time so we can start our task.

12 Q. You had to get straight to the buggies at a
13 specific time; correct?

14 A. Yes.

15 Q. Anything else said by either First Solar or
16 Sachs at any time about this rule?

17 A. No.

18 Q. Were you told that there were any other
19 restrictions on your drive other than those?

20 A. No.

21 Q. Were all the rules about the drive told to
22 you during orientation?

23 A. Yes.

24 Q. Never any other time; correct?

25 A. No.

1 Q. Could you get to work any way you wanted?

2 MR. BLANCHARD: That's ambiguous. That is.
3 It's completely ambiguous.

4 BY MR. CHAMMAS:

5 Q. You can answer if you understand the
6 question.

7 A. Can you repeat it.

8 Q. Yeah. The question was: Could you get to
9 work any way you wanted?

10 MR. BLANCHARD: It's ambiguous.

11 MR. CHAMMAS: I'll break that up. I'll
12 withdraw that.

13 Q. So, in other words, one way you mentioned you
14 got to work was by yourself; correct? You could drive
15 your own vehicle to work; correct?

16 A. (No audible response.)

17 Q. Do you need me to repeat the question?

18 MR. BLANCHARD: When you say get to work, you
19 know, it's ambiguous because it doesn't really specify
20 a point.

21 MR. CHAMMAS: All right.

22 MR. BLANCHARD: "Work" is an ambiguous term.

23 BY MR. CHAMMAS:

24 Q. All right. Let me ask it this way: You
25 could drive to the parking lot -- or drive to the

1 project -- let's put it this way: You could drive to
2 the parking lot on the project with your own vehicle;
3 correct?

4 A. Can you repeat that.

5 Q. Yeah. You could drive to the parking lot on
6 the project with your own vehicle; correct?

7 A. Yes.

8 Q. You could also drive to the parking lot on
9 the project in a carpool with other workers there;
10 correct?

11 A. Yes.

12 Q. Was there a bus that you could ride on as
13 well?

14 A. Yes.

15 Q. Can you -- did you ever ride the bus?

16 A. No.

17 Q. What did you -- how did you learn about the
18 bus? Orientation?

19 A. Yes, in orientation.

20 Q. What did you learn about the bus? What was
21 said about the bus during orientation?

22 A. I really don't remember. That was for guys
23 from Fresno and that area.

24 Q. So you don't remember anything about the bus;
25 is that correct?

1 A. Yes.

2 Q. Said to you during orientation; correct?

3 A. Yes.

4 Q. Did you believe that you could use the bus if

5 you wanted to during your employment, or did you not

6 know?

7 A. I did not know.

8 Q. Could a friend who didn't work on the project

9 drop you off at the parking lot on the project?

10 MR. BLANCHARD: Calls for speculation. Lacks

11 foundation.

12 THE WITNESS: No.

13 BY MR. CHAMMAS:

14 Q. How do you know?

15 A. Because he's not on the lease --

16 Q. He's not --

17 A. -- and they scan the cards that come in.

18 Q. Okay. And so is that -- are you -- are you

19 assuming why you couldn't do it, or did someone tell

20 you you can't do it because of this reason?

21 A. It was told.

22 Q. What was told?

23 A. That you can't because everyone has their car

24 information --

25 Q. So were you told --

1 A. -- on the badges.

2 Q. So were you told at some point that friends
3 could not drop you off at the parking lot on the
4 project?

5 A. Yes.

6 Q. When were you told that?

7 A. Foremens.

8 Q. The foreman told you this at what point?

9 A. When we first started.

10 Q. At orientation?

11 A. Out in the field.

12 Q. Okay. So this was -- was this a different
13 rule that you hadn't mentioned yet?

14 A. I guess.

15 Q. Okay. So the rule is -- how would you
16 describe the rule?

17 A. You can't get dropped off by anyone else.
18 Either carpool or drive yourself.

19 Q. Or take the bus?

20 A. For those that stay in that area, Kings
21 County and Fresno area.

22 Q. Why do you believe that -- so do you believe
23 that only people from Kings County and Fresno could
24 ride the bus?

25 A. Yes.

1 BY MR. CHAMMAS:

2 Q. In the area that you parked your vehicle
3 after entering the project, were the buggies right
4 there next to where you parked your vehicle?

5 A. Yes.

6 Q. So you just would step out and walk a little
7 bit, or how -- can you estimate how long it took you
8 to get between your car and the buggy?

9 MR. BLANCHARD: It's compound.

10 THE WITNESS: Two, three minutes.

11 BY MR. CHAMMAS:

12 Q. What time would you typically leave your
13 house to get to work, whether you were carpooling or
14 not?

15 A. 5:30, 5:40.

16 Q. Between 5:30 and 5:40 a.m.?

17 A. Yes.

18 Q. So if you left at 5:30 a.m., it's your
19 testimony that you would typically get to the guard
20 shack at -- an hour and 20 minutes later at -- let's
21 just say 6:50 a.m.; correct?

22 A. Between 6:30, 6:40, 6:50 sometime, yes.

23 Q. Because you said it took an hour and 20
24 minutes between your house and the guard shack.

25 Do you remember that?

1 usual or typical for you to drive less than the speed
2 limit because of traffic while you were driving on the
3 project.

4 MR. BLANCHARD: Compound.

5 THE WITNESS: I just don't remember right
6 now.

7 MR. BLANCHARD: And ambiguous.

8 BY MR. CHAMMAS:

9 Q. Did you listen to music in your car while you
10 were driving on the project?

11 MR. BLANCHARD: Compound.

12 THE WITNESS: No. You couldn't smoke. You
13 couldn't listen to music.

14 BY MR. CHAMMAS:

15 Q. So that was another rule -- two more rules
16 that we want to add to the rules; is that correct?

17 A. Yes.

18 Q. No smoking and no music?

19 A. Yes.

20 Q. When did you hear these -- let's take the
21 first one.

22 When did you hear there was no smoking?

23 A. That was one I just remembered from
24 orientation.

25 Q. It was during orientation?

1 A. Yes.

2 Q. And who said that?

3 A. First Solar and Sachs.

4 Q. The same testimony as to one or both said

5 that at some time during orientation; correct?

6 A. In orientation they all spoke the same set of

7 rules.

8 Q. And they said, "No smoking"; correct?

9 A. Yes.

10 Q. They said, "Obey the speed limit"; correct?

11 A. Yes.

12 MR. BLANCHARD: It's asked and answered.

13 MR. CHAMMAS: What?

14 MR. BLANCHARD: It's asked and answered.

15 MR. CHAMMAS: Yeah, all these are going to be

16 right now.

17 Q. And they also said -- they also talked about

18 the environmental rules; correct?

19 A. Yes.

20 MR. BLANCHARD: Same objection.

21 BY MR. CHAMMAS:

22 Q. Now, the rule about no music, did they both

23 also say that during orientation?

24 A. Yes.

25 Q. What -- do you know the reason for no music?

1 Scan Time Out, those first two columns.

2 And you mentioned that it took 45 minutes to
3 get from the guard shack to -- 40 to 45 minutes to get
4 from the guard shack to the parking lot; correct?

5 A. Yes.

6 Q. So if we look on a date like -- like
7 December 1 when you badged in at 7:27 a.m., you were
8 probably late that day; correct?

9 MR. BLANCHARD: This is just speculation.
10 This document is not a -- this is a spreadsheet that
11 you prepared and, as a result, the document itself
12 lacks foundation.

13 MR. DION-KINDEM: I'm not going to let him
14 answer any questions about this document.

15 MR. BLANCHARD: It's not source records.

16 MR. DION-KINDEM: It hasn't been produced,
17 although it's been requested in discovery. You're
18 trying to ambush us in a deposition with documents you
19 haven't produced. You haven't produced the underlying
20 documentation, and you're asking him about information
21 on a spreadsheet you personally prepared, which is
22 pure speculation.

23 You're asking him that he must have been late
24 on a certain day, assuming what you put down is true.
25 So he's not going to testify about anything on this

1 BY MR. CHAMMAS:

2 Q. Were you ever late to work?

3 A. Not that I can recall.

4 Q. So you remember always being at the buggy by
5 eight o'clock?

6 MR. BLANCHARD: Compound.

7 THE WITNESS: Yes.

8 BY MR. CHAMMAS:

9 Q. Do you ever remember badging in as -- at
10 later than 7:30 in the morning?

11 MR. BLANCHARD: Calls --

12 THE WITNESS: No.

13 MR. BLANCHARD: Compound.

14 BY MR. CHAMMAS:

15 Q. Do you believe that you did or you believe
16 that you didn't?

17 MR. BLANCHARD: Compound.

18 THE WITNESS: I believe that I didn't.

19 BY MR. CHAMMAS:

20 Q. You didn't badge in later than 7:30 on any
21 day; correct?

22 A. Correct, yes.

23 Q. And why do you believe that you didn't badge
24 in that late?

25 MR. BLANCHARD: Compound.

1 THE WITNESS: Because it could take 45
2 minutes or 40 minutes to get up top. I'll be late
3 then.

4 BY MR. CHAMMAS:

5 Q. What time would you -- what's the latest you
6 believe that you badged in on any day that you worked
7 at Sachs?

8 A. I can't recall.

9 Q. Did you ever get to the parking lot early,
10 before 8:00?

11 A. Yes.

12 Q. What would you do when you got there early?

13 MR. BLANCHARD: It's compound.

14 THE WITNESS: Warm the buggy.

15 BY MR. CHAMMAS:

16 Q. What does that mean?

17 A. Warm the buggy up. Put my lunch in.

18 Q. Did you drive the buggy?

19 A. No.

20 Q. Someone else drove you?

21 A. Yes.

22 Q. Who drove the buggy normally when you got to
23 the parking lot?

24 A. Coworkers.

25 Q. Who?

1 A. Coworkers.

2 Q. People like you?

3 A. Yes.

4 Q. So could you have driven the buggy but you
5 just didn't, or were you not allowed to drive the
6 buggy?

7 MR. BLANCHARD: Calls for speculation. Lacks
8 foundation.

9 THE WITNESS: I just didn't.

10 BY MR. CHAMMAS:

11 Q. Sorry?

12 A. I didn't.

13 Q. You did drive the buggy?

14 A. I didn't drive.

15 Q. Oh. But you could have; correct?

16 A. Yes.

17 Q. So were the vehicles -- buggies unattended,
18 and when you got there, a group of you would get in
19 the buggy, and then one of you would drive it to the
20 place where you would work? Correct?

21 MR. BLANCHARD: Compound.

22 THE WITNESS: Mainly the foremens.

23 BY MR. CHAMMAS:

24 Q. They would drive the buggy, the foremen?

25 A. Yes.

1 A. A special seat, yeah.

2 Q. -- parts of the buggy?

3 A. Yes. And if they weren't there on time to
4 get that specific seat, you got to either go to the
5 back, or if there's no room in the back when it's
6 already three people in the back and there's room up
7 front, that means you have to get in the middle. But
8 I used to always have to get in the middle, and the
9 particular individual would have the spot on the
10 outside.

11 MR. CHAMMAS: Okay. Could we go off the
12 record a minute, please.

13 THE VIDEOGRAPHER: The time is 1:23 p.m. We
14 are now off the record.

15 (Brief recess.)

16 THE VIDEOGRAPHER: We are back on the record.
17 The time is 1:31 p.m.

18 BY MR. CHAMMAS:

19 Q. So these buggy wars that you testified about,
20 I think you said that the foreman wants to put a lady
21 on the outside.

22 Is that what you had said?

23 A. Yes, a white woman.

24 Q. A white woman. Was it one particular woman,
25 or was it any woman or other women or just one woman

1 in particular that you're referring to?

2 A. One particular woman on the crew.

3 Q. Do you know her name?

4 A. I forgot her name. No.

5 Q. Okay. Was it -- how many women were there on
6 the crew?

7 A. Just one.

8 Q. Overall; right? Total, one woman in the
9 whole crew; correct?

10 A. Yes.

11 Q. And so would the foreman tell you to move if
12 she were wanting a seat?

13 A. Yes.

14 Q. And you'd have to move to a different part of
15 the buggy?

16 A. Yes, either in the back, or if the back is
17 packed, I get in the middle.

18 Q. Of the front; right?

19 A. Yes.

20 Q. Were there two rows in the buggy?

21 A. It was just a two-seater, but we made it a
22 three. But it's three rows, three-seater in the back.

23 Q. I see. So you would be -- if you had stayed
24 in the front, it would be you in the middle, and the
25 lady on your right or -- yeah, on your right and the

1 driver on the left; is that right?

2 A. Yes.

3 Q. Or you would go back and squeeze in with
4 other people; right?

5 A. Yes.

6 Q. How many times had this happened?

7 A. A few.

8 Q. Like --

9 A. Three, four times maybe.

10 Q. Less than five?

11 A. Yes.

12 Q. Do you know this woman's name?

13 MR. BLANCHARD: Asked and answered.

14 THE WITNESS: No.

15 BY MR. CHAMMAS:

16 Q. Would the foreman ever ask someone else to
17 move to make room for this lady?

18 A. Everybody else, they didn't really care about
19 the front because they already knew what the
20 consequences would have been. If I get up there, I
21 got to move, anyway, regardless, because she's going
22 to be right there regardless. So they never did get
23 up front. But I would always be there on time and at
24 the buggy while everyone else do whatever they do, and
25 then they come to the buggy.

1 Q. So you were the only person who was up in the
2 front when she would try to get in; is that correct?

3 A. Yes.

4 Q. But -- and the other people you believe
5 didn't even bother going to the front because they
6 would have been kicked out too?

7 A. Yes.

8 MR. BLANCHARD: Calls for speculation. Lacks
9 foundation.

10 BY MR. CHAMMAS:

11 Q. And why do you believe that that they didn't
12 want to go to the front because they would be kicked
13 off too? Did they tell you that?

14 MR. BLANCHARD: Calls for speculation. Lacks
15 foundation.

16 THE WITNESS: No.

17 BY MR. CHAMMAS:

18 Q. So why do you have that opinion?

19 MR. BLANCHARD: Calls for speculation. Lacks
20 foundation.

21 THE WITNESS: Because she always sat up
22 front, or even if someone beat her to it, the foreman
23 was going to move us and put the white woman up front.

24 BY MR. CHAMMAS:

25 Q. And do you believe that if it was a woman of

1 A. I can't think of none. Nothing else right
2 now.

3 MR. CHAMMAS: Let me mark this as Exhibit 4.

4 (Defendants' Exhibit 4 was marked for
5 identification.)

6 BY MR. CHAMMAS:

7 Q. Exhibit 4 is Bates-stamped PL000045, and it's
8 got some handwritten notes on it.

9 Is this your writing?

10 A. Yes.

11 Q. Can you read the first note on the left?

12 A. It say, "Sachs call in March 1, 2017. I
13 called in at 9:04 a.m.," which was on a Wednesday.

14 Q. Do you remember when you wrote this?

15 A. I believe the same day. It's dated.

16 Q. March 1?

17 A. Yes.

18 Q. Do you know why you wrote this down?

19 A. Because I had proof that I called in in case
20 they try to say I haven't.

21 Q. You called in to say what, do you remember?

22 A. Sick, going to be absent.

23 Q. Okay. So look at the next note. It says,
24 "March 2, 2017," then it says, "5:01 a.m. I called
25 my" -- can you read the rest?

1 A. "Called my GF at the call-in number," which
2 was Thursday, at 5:03 a.m., the Sachs call-in number.
3 The same thing: Let him know that I'm going to be out
4 sick.

5 Q. So this is March -- so on March 3rd you were
6 terminated. I thought March 2 you had vehicle
7 problems.

8 A. Yeah, it's the 2nd, then. Well, the 1st I
9 was sick. The 2nd, that's when my vehicle broke down.
10 Then I went back to work on the 3rd and got
11 terminated, yeah.

12 Q. Okay. So you weren't sick on the 2nd; right?

13 A. Yeah, the 1st. Then the 2nd I was on my way
14 to work, but my vehicle broke down and had to get it
15 towed. Then when I came back on the 3rd, they
16 terminated me.

17 Q. Okay. And you're writing these notes to
18 document the fact that you were calling in?

19 A. Yes.

20 Q. And you again wrote the first one on
21 March 1st?

22 A. Yes.

23 Q. And the second note on March 2nd; correct?

24 A. Yes.

25 Q. And by "GF," does that mean general foreman?

1 A. Yes.

2 Q. Do you see where it says Thursday under -- is
3 March 2nd a Thursday, if you know?

4 A. I can't recall.

5 Q. But is that what you meant to write when you
6 wrote that?

7 A. Yes.

8 Q. Did you mean to write that --

9 A. Yeah.

10 Q. -- March 1 is Wednesday and March 2 is
11 Thursday?

12 A. Yes.

13 Q. When you talked -- when you spoke -- did you
14 speak to anyone on March 1st when you called, do you
15 remember?

16 A. No. It was just a message.

17 Q. And you left a message --

18 A. Yes.

19 Q. -- saying you were sick?

20 A. Yes.

21 Q. Do you know what the policy is at Sachs when
22 you are sick or when you can't come to work?

23 MR. BLANCHARD: Calls for speculation --

24 THE WITNESS: That was the policy --

25 MR. BLANCHARD: -- lacks foundation.

1 Q. Were you leaving for work at 5:03 a.m. or
2 before?

3 A. Yes, to go to the store, get gas, lunch, and
4 head out.

5 Q. Was that typical for you to leave that early?

6 A. Yes. I have to go to the store and get gas
7 and lunch. It's going to take time.

8 Q. Then what happened? Did you not start your
9 car? Did you go somewhere, and then the car stopped
10 working? Do you know what happened?

11 A. It just shut down.

12 Q. Do you remember if it shut down in your
13 driveway, or were you already far along the way?

14 A. I was a distance away.

15 Q. You were what? Sorry.

16 A. A distance away.

17 Q. Do you know how far you had traveled before
18 it stopped working?

19 A. No.

20 Q. Were you by yourself when it stopped working?

21 A. You mean the carpooler.

22 Q. So you were in a carpool. There were other
23 people in your vehicle when it stopped working?

24 A. Yes.

25 Q. Did any of them go to work that day?

1 speculation. Lacks foundation.

2 But you can answer.

3 THE WITNESS: No.

4 MR. CHAMMAS: Please mark this as Exhibit 11.

5 (Defendants' Exhibit 11 was marked for
6 identification.)

7 BY MR. CHAMMAS:

8 Q. Exhibit 11 is Bates-stamped SACHS-JG-000001,
9 and it's Employee Disciplinary Warning.

10 Is that your signature at the bottom under
11 Employee Signature?

12 A. Yes.

13 Q. And when it says -- on the write-up it
14 says -- it's dated December 13, 2016. On the write-up
15 it says, "Foreman asked Justin to change seats.
16 Became an issue by yelling back to foreman. Other
17 issues have been reported but taken care of. Moving
18 forward has been placed on another crew." Then it
19 says, "Clarification: In the buggy" typed in.

20 So this is what you're referring to of an
21 incident where you were asked to change seats?

22 A. Yes.

23 Q. And do you remember this particular incident,
24 or was this like a series of incidents that have
25 happened? Was this like many times?

1 MR. BLANCHARD: The document speaks for
2 itself. Calls for speculation. Lacks foundation --

3 THE WITNESS: I can't recall.

4 MR. BLANCHARD: -- and ambiguous.

5 BY MR. CHAMMAS:

6 Q. You can't recall if this was the first time
7 or if this was --

8 A. Yeah, I can't recall.

9 MR. BLANCHARD: When you say -- I don't mean
10 to be too picky about this. But are you saying
11 whatever is reported on that sheet, is that the first
12 time or another time? "That" is an ambiguous
13 statement. I don't know if it's this write-up or that
14 incident.

15 MR. CHAMMAS: I'm asking about being asked to
16 change seats.

17 MR. BLANCHARD: Are you asking him whether
18 that document reports the first incident about
19 changing seats or --

20 MR. CHAMMAS: Yes.

21 MR. BLANCHARD: -- a later incident about
22 changing seats?

23 MR. CHAMMAS: I'm asking if this document is
24 the first time that it happened he was asked to change
25 seats, and there was an incident on the 16th

1 apparently -- or on the 13th of December 2016, and he
2 was written up for that.

3 Q. That's what I'm asking: Was that the first
4 time that this issue about changing seats occurred.
5 And I believe your answer was "I don't recall"; is
6 that right?

7 A. Yes.

8 Q. Do you remember being written up about it?

9 A. Now that I'm looking back at it, yes.

10 Q. Now looking back at it, does it refresh your
11 recollection as to what happened on this particular
12 incident?

13 A. Yes.

14 Q. What happened?

15 A. Buggy wars, buggy issues, musical chairs.

16 Q. Yeah. I think before, you testified that
17 that was kind of what happened over a series of times.
18 I'm wondering if this one was any different or it
19 stands out differently than any other times, because
20 this one you were in an uproar.

21 A. The same reason. I guess he just couldn't
22 take it --

23 Q. Were you --

24 A. -- and blew a fuse.

25 Q. Were you more vocal on this incident than

1 other incidents?

2 A. Not either time.

3 Q. "Not either time" you said?

4 A. Yes.

5 Q. It says you yelled back at the foreman. Did
6 you yell back to the foreman?

7 A. No.

8 Q. Did you say anything to the foreman?

9 A. No.

10 Q. I believe you testified before that you said
11 something when you were asked to change seats, like:
12 Well, I was already here.

13 Did you ever say that?

14 A. Yes, something like that, but nothing never
15 negative to receive a write-up.

16 Q. Right. You didn't yell. You just said that;
17 right?

18 A. Yeah.

19 Q. Something to the effect of: I was already
20 here; it's not fair; right?

21 A. Yeah.

22 Q. Then it says you've been placed on another
23 crew.

24 Do you see that?

25 A. Yes.

1 Q. Was -- do you remember being transferred?

2 A. Yes, the next rollover.

3 Q. The next what over?

4 A. The next rollover. Same crew, just the next
5 rollover.

6 Q. What's a rollover?

7 A. They roll you over from this side to this
8 side. That's a rollover.

9 Q. Meaning a different place you're working?

10 A. Still see the same people, foremens,
11 everybody. All the coworkers around.

12 Q. It's just you're working in a different
13 location?

14 A. Same location. Just one row over.

15 Q. Right. So it's a little bit next to; is that
16 correct?

17 A. Yes.

18 Q. But you're doing it with different people,
19 like, immediately around you, in your crew? So, like,
20 when you have a crew, is the crew -- how many people
21 are in a crew?

22 A. It could be up to 10 or 15.

23 Q. And then so you went from one crew -- before
24 this write-up happened on December 30, 2016, was the
25 crew you were in -- did that include the white lady?

1 A. Yes.

2 Q. Then you changed crews. Was she no longer in
3 your crew?

4 A. She was just the next over.

5 Q. Right. But not the same crew; right?

6 A. Yes. Not the same crew, yes.

7 Q. Does that mean that maybe the buggy rides
8 were different now? A different group of people were
9 in the buggy ride?

10 A. It was still the same.

11 Q. She would still -- so did this happen again
12 after you changed crews? Like, she was given
13 preference over you in the buggy?

14 A. Yes.

15 Q. So what crew you're on may not affect who you
16 ride in the buggies with; correct?

17 A. I was still with the same people jumping on
18 the same buggy at times. But I guess after that, he
19 just decided to pretty much not even say nothing, and
20 I just kept her up in the front.

21 Q. So after this incident, this write-up, did
22 you ride in the front, or did she ride in the front
23 or --

24 A. She was always in the front. Stayed in the
25 front.

1 Q. And you were in between, next to her?

2 A. In the back. I took the back route now.

3 Q. So you didn't speak up after this incident;
4 correct?

5 A. No.

6 Q. Is that correct what I said?

7 A. Yes.

8 MR. CHAMMAS: Please mark this as 12.

9 (Defendants' Exhibit 12 was marked for
10 identification.)

11 BY MR. CHAMMAS:

12 Q. Exhibit 12 is Bates-stamped SACHS-JG-000003,
13 and it's -- and it says -- the heading is Employee
14 Disciplinary Warning, and under Employee Signature it
15 says "Refused to Sign."

16 Have you ever seen this document?

17 A. Yes.

18 Q. You have. Okay. Is this -- I'll just read
19 the notes into the record. It says, "Explain below
20 why the warning was given, setting forth all the facts
21 in detail: Had issues with other crews (foremens)
22 taking direction on task/leaving work area, poor
23 workmanship, no interest in working/complaints from"
24 others -- "other crew members on having to rework his
25 scope of work/had other write-ups similar to this

1 one."

2 Is this what was handed to you before you got
3 to the office on March 3rd? When the foreman said
4 "Read this," and you read it, is this what you read?

5 A. Yes.

6 Q. He signed it, but you didn't?

7 A. Yes.

8 Q. This was Keith, the foreman; right?

9 A. Yes.

10 Q. And the box is checked where -- "Does not
11 follow instructions, Insubordination, Leaving job
12 without permission," and "Poor productivity."

13 Does -- now, none of this is about
14 attendance. Do -- or leaving job without permission
15 might be attendance.

16 But do any of these boxes being checked have
17 any -- does that mean anything to you?

18 MR. BLANCHARD: That's ambiguous. Calls for
19 speculation. Lacks foundation. The document speaks
20 for itself. Compound.

21 THE WITNESS: Yes.

22 BY MR. CHAMMAS:

23 Q. What -- what does it mean to you?

24 A. That it was falsifying. Marked it up that
25 day, the 3rd of March 2017. He checked those boxes

1 that day. For retaliation and harassment or whatever,
2 I don't know. But this was done that day to terminate
3 me because of my color, I guess.

4 MR. CHAMMAS: Please mark this as Exhibit 13.

5 (Defendants' Exhibit 13 was marked for
6 identification.)

7 BY MR. CHAMMAS:

8 Q. Exhibit 13 is Bates-stamped SACHS-JG-000004,
9 and the heading is Notice of Termination.

10 Have you seen this document before?

11 A. Yes.

12 Q. When did you see it?

13 A. On the 3rd. March 3rd, 2017.

14 Q. So the -- so I know the person handed you the
15 two checks. I remember you testifying about that.

16 But did they hand you a notice of termination
17 like this?

18 A. No. I think when I opened up one of the
19 checks, it was inside the check when I got to the
20 check cashing place.

21 Q. It was in the envelope?

22 A. Yes.

23 Q. And under Discharge it says, "Reason for
24 termination: Absenteeism" and "Refuses to work as
25 directed."

1 final two checks, you think?

2 A. His name was on the paperwork, but he never
3 handed it to me. That foreman that took me up there.

4 Q. Okay. So that whole day you never saw him;
5 right?

6 A. No.

7 Q. Okay. "He's the superintendent, and it's my
8 right to have all proper documents and none to be
9 falsified by the company or dates and times switched
10 and moved around. So I'd like to receive all paystubs
11 and also every single time I badged in between early
12 as possible as 7:11-7:21" --

13 Do you know what that is right there? Oh,
14 a.m. I see.

15 -- "I badged in between early as possible as
16 7:11-7:21 a.m. were the times I made it to work to be
17 there on time at 8:00 a.m. start time!"

18 So when you wrote this, did you -- were you
19 saying here that the times that you badged in was
20 between 7:11 and 7:21 to get there by 8:00?

21 MR. BLANCHARD: Compound.

22 THE WITNESS: Different times, yes.

23 BY MR. CHAMMAS:

24 Q. When you say "different times," what do you
25 mean?

1 A. Different project from here and there.

2 Q. I mean on this project in particular.

3 A. Yeah. Some of those people that I remember
4 from the last sites where they're, you know, going to
5 get water and soap and staging supplies.

6 Q. My question is: On this project in
7 particular, how many different people did you witness
8 were allowed to be water carriers on this project,
9 whether you knew them or not from other projects? How
10 many total people were allowed to be water carriers?

11 A. Six or so.

12 Q. Six or so; right?

13 A. Yes.

14 Q. How many people -- I think -- do you know the
15 reasons why those six were allowed to be water
16 carriers?

17 A. No.

18 MR. BLANCHARD: Calls for speculation. Lacks
19 foundation.

20 BY MR. CHAMMAS:

21 Q. You said no?

22 A. Yes. No.

23 Q. Were those six window installers like you --
24 or panel installers like you?

25 A. Yes.

1 Q. And how many panel installers besides you
2 were there in total?

3 MR. BLANCHARD: Calls for speculation. Lacks
4 foundation.

5 THE WITNESS: Like 4- to 500 people. So I
6 couldn't tell you out of the 4- to 500, 600 people how
7 many people were installing, how many people were
8 doing this, and how many people were doing that.

9 BY MR. CHAMMAS:

10 Q. But when you say -- can you give me an
11 estimate of, like, 10, 50 were panel installers like
12 you?

13 MR. BLANCHARD: Calls for speculation. Lacks
14 foundation.

15 THE WITNESS: Maybe a couple hundred. 200,
16 250.

17 BY MR. CHAMMAS:

18 Q. 200 -- so hundreds -- more than 100 people --

19 A. Yes.

20 Q. -- like you installing panels; correct?

21 A. Yes.

22 Q. And only six of them, that you're aware of,
23 were allowed to be water carriers; correct?

24 A. Yes.

25 Q. And do you feel that you weren't allowed to

1 transferred to another crew already.

2 But did you complain about the buggy wars,
3 and that's what caused -- and after you complained,
4 you got written up? Is that your recollection of what
5 happened?

6 A. Yes.

7 Q. We talked about -- and these complaints about
8 the buggy wars, you said to -- the foreman who was
9 doing it, you said to him: Hey, why can't I sit in
10 the front seat? I was here first"; right?

11 A. Yes.

12 Q. And that's the complaint you made; right?

13 A. Yes.

14 Q. Any other complaints you made about the buggy
15 wars besides that?

16 A. No.

17 Q. So the person who wrote you up and
18 transferred you to another crew, do you have any
19 reason to believe that he knew that you complained?

20 A. No.

21 MR. BLANCHARD: Calls for speculation. Lacks
22 foundation.

23 BY MR. CHAMMAS:

24 Q. Then it says in your Complaint:

25 In retaliation for his complaints,

1 on or about March 3, 2017, a
2 superintendent accused Plaintiff of
3 having left the job site mid-shift on
4 March 1, 2017. Plaintiff did not go to
5 work at all that day. The foreman
6 claimed that Plaintiff had signed in,
7 that they were unable to find him at
8 the end of the day. He mentioned
9 having spoken to Plaintiff in that
10 morning. By that time, there was a
11 second African-American man on the
12 crew. This man told Plaintiff that the
13 foreman had talked to him, the other
14 African-American man, that morning, not
15 the Plaintiff.

16 So I have a few questions. One is: You
17 went -- did you go to work -- so you didn't go to work
18 at all --

19 A. The 1st or the 2nd.

20 Q. The 1st or the 2nd.

21 A. I went back March 3, 2017.

22 Q. Right. And did you speak to the other
23 African-American man about talking to the
24 superintendent or the foreman?

25 A. I heard someone else say that they said it

1 was him and not me. So that's how -- I was, like, I
2 wonder why he would think it was me when it wasn't.

3 It was like -- it was some Hispanic guys.
4 They was, like, "Man, where you been? You ain't been
5 here."

6 I was, like, "No, I'm just getting back
7 today."

8 Q. So the other black man on the crew, I forget
9 his name.

10 Did you say you knew his name or not? I
11 forget.

12 A. No. We never did really communicate.

13 Q. So you don't know his name. And did you ever
14 speak to him ever?

15 A. Not really. Just, like, "How you doing?"

16 Q. Okay. So when this Complaint says that that
17 man, the African-American man, told you that the
18 foreman had talked to him, the other African-American
19 man, that morning, not to Plaintiff, that never
20 happened; right? You never spoke to him. The second
21 African-American man never talked to you about
22 speaking to the foreman; correct?

23 A. It was some Hispanic guys and the mixed
24 guy --

25 Q. Told you --

1 THE VIDEOGRAPHER: The time is 3:06 p.m. We
2 are now off the record.

3 (Brief recess.)

4 THE VIDEOGRAPHER: We are back on the record.
5 The time is 3:14 p.m.

6 BY MR. CHAMMAS:

7 Q. The lady that you said was given preferential
8 seat on the buggy --

9 You remember her?

10 A. Yes.

11 Q. -- was she more senior than you?

12 A. Yes.

13 Q. What position was she?

14 A. Like --

15 MR. BLANCHARD: Calls for speculation. Lacks
16 foundation.

17 THE WITNESS: -- JW, journey wireman.

18 MR. BLANCHARD: What you need to do is: When
19 I make an objection -- I need to make objections -- so
20 don't answer while I'm making an objection because it
21 will make it really hard for the nice court reporter
22 to write the things down.

23 THE WITNESS: Okay.

24 MR. BLANCHARD: So give a little space so I
25 can make an objection, if I need to, if you will.

1 preferential seating on the buggy?

2 MR. BLANCHARD: Calls for speculation. Lacks
3 foundation.

4 THE WITNESS: I don't know. I can't recall
5 what the reason was.

6 BY MR. CHAMMAS:

7 Q. That job of water carrier, did you ever ask
8 to be a water carrier?

9 A. No.

10 Q. Do you know if any of the six others had
11 asked to be water carrier?

12 MR. BLANCHARD: Calls for speculation. Lacks
13 foundation.

14 THE WITNESS: No.

15 BY MR. CHAMMAS:

16 Q. After your termination from Sachs, did you
17 look for other work?

18 A. Yes.

19 Q. When did you start looking for other work?

20 A. Maybe a week after.

21 Q. What did you do to look for work?

22 A. Applied myself, went to different job
23 locations, filled out applications, turned them in.

24 Q. Did you go through your union at all?

25 A. Yes, but they didn't have any work available

1 [This is a placeholder should signature be
2 requested in a future volume.]

3 I hereby declare under penalty of perjury
4 that the foregoing is true and correct.

5 Executed this ____ day of _____,
6 20____, at _____, California.

7

8

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JUSTIN ANTHONY GRIFFIN

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REPORTER'S CERTIFICATE

I, Jan M. Roper, a Certified Shorthand Reporter No. 5705, do hereby certify:

That, prior to being examined, the witness named in the foregoing deposition, JUSTIN ANTHONY GRIFFIN, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth.

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter transcribed under my direction, and I hereby certify that the foregoing deposition is a true and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action nor in anywise interested in the outcome thereof.

_____ Reading and Signing was requested.

_____ Reading and Signing was waived.

XX Reading and Signing was not requested in Volume I.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 3rd day of December, 2017.

JAN M. ROPER, RPR, CSR NO. 5705

EXHIBIT 2

LIV. C. ORDER NO. 1192
MANUFACTURING INDUSTRY
EFFECTIVE JUNE 28, 1943

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL WELFARE

315 VAN NESS AVENUE, SAN FRANCISCO 2
205 STATE BUILDING, LOS ANGELES 12
141 HOLLAND BUILDING, FRESNO 1
601 NEW CALIFORNIA BUILDING, SAN DIEGO 1

To Whom It May Concerns:

TAKE NOTICE: That pursuant to and by virtue of the authority vested in it by Sections 1171 to 1263 inclusive, Labor Code of the State of California, and after findings and recommendations of a wage board having been received and public hearing duly had on motion of the Industrial Welfare Commission, notice of said hearing having been duly given in the manner provided by law, the Industrial Welfare Commission hereafter finding and determining that the minimum wage to be paid to women and minors in the Manufacturing Industry, is such wage as hereinafter set out, and the hours of work consistent with, and the standard conditions of labor demanded by, the health and welfare of such women and minors are as set forth below,

THE INDUSTRIAL WELFARE COMMISSION OF THE STATE OF CALIFORNIA DOES HEREBY ORDER THAT:

1. APPLICABILITY OF ORDER

This Order shall apply to all women and minor employees, whether on a time, piece-rate or other basis, employed in a manufacturing industry.

2. DEFINITIONS

- (a) "Commission" means the Industrial Welfare Commission of the State of California.
- (b) "Manufacturing Industry" means any industry or business operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling or assembling any goods, articles, or commodities, in whole or in part, and includes any industry engaged in any operations or occupations in any manner connected with the above; and includes the wrapping, bottling, packaging, or preparation for display thereof;

EXCEPT: 1. The canning, preserving, processing, freezing and handling of sea foods;
2. The canning, preserving, and freezing of fruits and vegetables;
3. Motion picture production;
4. Clerical, professional, and technical services within the industry;
5. Handling after harvest, including packing, sorting, cutting, and drying, of farm products, including fruits, vegetables, nuts, poultry and eggs.

- (c) "Employ" means to engage, suffer, or permit to work.
- (d) "Employee" means any woman or minor employed by an employer.
- (e) "Employer" means any person, as defined in Section 18 of the Labor Code, who employs any woman or minor, and includes any person who directly or indirectly or through an employee, agent, or any other person, delivers to another any materials or articles for the application of any labor thereto, such materials or articles thereafter to be returned to such person, not for the personal use of such person or a member of his immediate family; and also includes any person conducting any vocational, trade, or other school whose products are offered for sale.
- (f) "Hours Employed" means all time during which:
 - (1) an employee is required to be on the employer's premises, or to be on duty, or to be at a prescribed work place; or
 - (2) an employee is suffered or permitted to work whether or not required to do so. Such time includes, but shall not be limited to, waiting time.
- (g) "Handicapped Worker" means an employee whose earning capacity is impaired by age or physical or mental deficiency or injury.
- (h) "Learner" is a woman or minor whom the Commission permits, upon registration, to work for less than the legal minimum wage in consideration of the provision by the employer of reasonable facilities for learning the industry.
- (i) "Wages" means compensation to employees, and shall be an unconditional payment to an employee in cash or by check negotiable at par without deduction, except such deductions as are required by law.

3. MINIMUM WAGES

Every employer shall, except as provided by Sections 4, 5(f) and 6, pay to each woman or minor employee wages not less than the following:

- (a) In any week in which such employee is employed forty (40) hours, \$18.00 per week.
- (b) In any week in which such employee is employed less than forty (40) hours, 50 cents per hour, but need not exceed \$18.00 per week.
- (c) In any week in which such employee is employed longer than forty (40) hours, 45 cents per hour for each hour worked in excess of forty (40) hours.
- (d) For any day in which an employee is required to report and does report for work, the employer shall pay the employee for not less than four (4) hours at 50 cents per hour, whether or not such employee actually is put to work.
- (e) Fractions of hours employed shall be compensated for on the basis of not less than fifteen (15) minutes, and any fraction of fifteen (15) minutes shall be considered as fifteen (15) minutes.

4. LEARNERS

Employers may employ women and minors as learners in accordance with the terms of permits issued by the Commission, provided that within two (2) weeks after employment the employer shall register such learner upon forms to be supplied by the Commission. Such permits will be granted under the following conditions:

- (a) Learners shall be paid not less than 30 cents per hour for the first 320 hours of employment, and not less than 37½ cents per hour for the next 160 hours of employment, and thereafter not less than the legal minimum wage for women and minors as set forth in Section 8.
- (b) The learning period shall not exceed 480 hours.
- (c) The learner shall be taught skilled or semi-skilled work as such is defined by the Index of Occupational Titles published by the U. S. Department of Labor. Workers in the unskilled trades shall be subject to a learning period of not more than eighty (80) hours in the establishment and the rate shall be not less than 37½ cents per hour for the learning period.
- (d) No permit will be issued where there is evidence of attempted evasion of the law by employers who make a practice of dismissing learners or transferring them to other departments when they reach the promotional period.
- (e) Women and minors who are regularly indentured apprentices are considered learners under this Order.
- (f) The total number of female learners in any one establishment, exclusive of office workers, shall not exceed ten (10) per cent of the total number of female workers employed in said establishment, exclusive of office workers, except that an employer of less than ten (10) workers may be allowed one learner, and further that in highly seasonal industries or new industries, a permit may be granted by the Commission for an increase in the proportion of learners on proof that a sufficient supply of experienced workers is not available. Such permit shall show the number of learners allowed, the conditions under which they may be employed, and the duration of the permit.
- (g) Where a learner transfers from one branch of any manufacturing industry to another branch of that industry...

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(h) Each employer shall register each learner employed by him with the Industrial Welfare Commission two (2) weeks from the commencement of the employment of said learner, and pending registration of such workers with the Commission he shall pay to all learners not less than the minimum rates as provided by paragraph 4, subdivision (a). All women and minor workers not registered with the Industrial Welfare Commission at the end of two (2) weeks' employment shall be rated by the Commission as experienced workers to be paid not less than the legal minimum wage.

5. HOURS

- (a) No employer shall employ any woman or minor in any manufacturing industry more than eight (8) hours in any one day or more than forty-eight (48) hours in any one week, or more than six (6) days in any one week, except as provided in Section 554 of the California Labor Code, Statutes of 1941.*
- (b) Every woman or minor employed in the manufacturing industry shall be entitled to one day's rest in seven. Sunday shall be considered the established day of rest for all women and minors unless a different arrangement is made by the employer for the sole purpose of providing another day of the week as the day of rest. In all such cases a written or printed notice shall be posted in the workroom designating the day of rest for each woman and minor.
- (c) No employer shall employ any woman or minor for a period of more than five (5) hours in any one day unless such period is broken by a meal period of not less than thirty (30) consecutive minutes.
- (d) No employer shall employ any person under the age of 18 years after 10 p.m. or before 6 a.m.
- (e) No employer shall employ any female 18 years of age and over after 12 midnight or before 6 a.m. except under permit from the Commission.
- (f) Where employment after 12 midnight or before 6 a.m. other than such employment regulated by subsection (g) of this section is in the opinion of the Commission essential to the operation of an industry, permits may be issued upon the condition that such standards as the Commission may prescribe shall be maintained, and upon the further condition that a wage of not less than 60 cents per hour shall be paid.

LEGISLATIVE INTENT SERVICE (800) 666-1917



(g) For the duration of the war emergency, subsection (f) of Section 5 shall not apply to any employer actually engaged in the production of war materials. Any employer engaged in the actual production of war materials must apply to the Commission for a permit to operate without compliance with subsection (f) of Section 5. The applicant shall prove to the satisfaction of the Commission that the employment of women 18 years of age and over between the hours of 12 midnight and 6 a.m. is reasonably necessary to increase war production. The Commission may thereupon issue a permit to such employer to operate without compliance with subsection (f) of Section 5. Said permit shall provide that such conditions and such standards as the Commission may order shall be maintained.

6. HANDICAPPED WORKERS

Women or minors whose earning capacity is impaired by physical or mental disability or injury may be employed under permit issued by the Commission at a special minimum wage, less than the legal minimum wage herein provided, but in no instance at a wage less than 66 2/3 per cent of the legal minimum wage. Such permits shall be granted only upon joint application of worker and employer and after investigation and finding of disability by the Division of Industrial Welfare.

7. WORKING EQUIPMENT

All working equipment shall be furnished, repaired, cleaned, laundered, and maintained by and at the expense of the employer. No employee shall be required to contribute directly or indirectly to the cost of such furnishing, repairing, cleaning, laundering, or maintaining. Working equipment includes machines, tools and any uniforms of a distinctive character which may be prescribed by the employer.

8. KEEPING OF RECORDS

- (a) Every employer shall keep at his place of employment, in a form and manner approved by the Commission, an accurate record with respect to each employee of the following information:
- (1) Name in full;
 - (2) Home address;
 - (3) Date of birth, if under 18 years of age;
 - (4) Occupation;
 - (5) Established day of rest;
 - (6) Male minors shall be marked "M" and female minors under 18 years of age shall be marked "F" on the payroll;
 - (7) Hours employed each workday, which shall show the hour the employee reports for work and the hour the employee leaves, which shall be recorded each day;
 - (8) Total wages paid and total hours employed in each payroll period;
 - (9) Hours employed and wages paid to each employee shall appear on the same record.
- (b) Whenever a piece work plan is in operation piece work rates must be posted in the plant, and a duplicate of the piece work ticket or record shall be delivered to and retained by the employee.
- (c) All required records shall be kept on file for at least three years at the plants and establishments at which the employees are employed.

9. FILING REPORTS

Every employer shall furnish to the Commission, or its duly authorized representative, at its request, any and all reports or information which the Commission may in its judgment require to carry out the purposes of this Order; such reports and information to be verified by oath of the employer or his agent who furnishes the same, if and when so requested by the Commission.

10. INSPECTIONS

The Commission and duly authorized representatives of the Division of Industrial Welfare shall be allowed free access to the place of business of any manufacturing industry to investigate and gather data regarding wages, hours, and other conditions and employment practices, and shall be permitted to inspect and make excerpts from any and all records and to question all employees for such purposes; or for the purpose of making any other investigation authorized by Labor Code Section 1174.

11. POSTING OF ORDER

Every employer shall post a copy of this Order in a conspicuous place where it can be read by the women and minor employees.

12. PENALTIES

Failure, refusal or neglect to comply with any of the provisions of this Order is a violation of the Labor Code of the State of California, and is punishable by fine, or imprisonment, or both.

13. SEPARABILITY

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of the Order shall be held invalid or unconstitutional, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect, as if the part so held invalid, or unconstitutional, had not been included herein.

14. SANITARY PROVISIONS

Every employer in the manufacturing industry, in addition to the foregoing provisions, is required to comply with the provisions of the Industrial Welfare Commission Order prescribing sanitary regulations for all industries.

15. INDUSTRIAL HOMEWORK

Wherever conditions make it applicable, every employer in the manufacturing industry is required to comply with the provisions of the Industrial Homework Act and Prohibitory Orders issued pursuant thereto.

Dated at San Francisco, California, this 9th day of April, 1942.

Order No. 11a, amended 1923, dated January 30, 1923, is hereby rescinded as and of the date when this Order becomes effective.

This order is effective June 29, 1942.

RENA BREWSTER, Chief
Division of Industrial Welfare

INDUSTRIAL WELFARE COMMISSION
STATE OF CALIFORNIA

JOHN C. PACKARD, Chairman
MARGARET L. CLARK
A. F. GAYNOR
EMILY H. HUNTINGTON
ANSELBY K. BALE



NOTICE

It is recommended that employees covered by this Order keep a record of the hours they work each day and the wage paid therefor.

NOTHING IN THIS ORDER PREVENTS EMPLOYERS FROM PAYING MORE THAN THE RATES FIXED BY THE COMMISSION AS THE MINIMUM OR LEAST RATES. THIS ORDER APPLIES TO ALL WOMEN AND MINORS IN THE MANUFACTURING INDUSTRY.

Statutes of 1937, Chapter 90, California Labor Code, Section 1199

1199. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than fifty dollars or by imprisonment for not less than thirty days, or by both, who does any of the following:

- (a) Requires or causes any woman or minor to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the Commission.
- (b) Pays or causes to be paid to any woman or minor a wage less than the minimum fixed by an order of the Commission.
- (c) Violates or refuses or neglects to comply with any provision of this Chapter or any order or ruling of the Commission.

***DAY OF REST LAW**

(Amended 1941, Stat. 1941, Chap. 1266, California Labor Code, Sections 550-554)

Sec. 550. As used in this chapter "Day's rest" applies to all situations whether the employee is engaged by the day, week, month, or year, and whether the work performed is done in the day or night time.

Sec. 551. Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven.

Sec. 552. No employer of labor shall cause his employees to work more than six days in seven.

Sec. 553. Any person who violates this chapter is guilty of a misdemeanor.

Sec. 554. This chapter shall not apply to any cases of emergency nor to work performed in the necessary care of animals, crops or agricultural lands, nor to work performed in the protection of life or property from loss or destruction, nor to any common carrier engaged in or connected with the movement of any train. Nor shall the provisions of this chapter apply when the employer and a labor organization representing employees of such employer have entered into a valid collective bargaining agreement respecting the hours of work of such employees. Nothing in this chapter shall be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires that the employee work seven or more consecutive days, providing that in each calendar month the employee receive days of rest equivalent to one day's rest in seven.

THIS ORDER MUST BE POSTED IN A CONSPICUOUS PLACE

IF FEDERAL WAGE AND HOUR ACT OR CODE SETS A HIGHER WAGE, THAT RATE MUST BE PAID

STATE PRINTING OFFICE

LEGISLATIVE INTENT SERVICE (800) 666-1917



EXHIBIT 3

INDUSTRIAL WELFARE COMMISSION ORDER NO. 1 R
Effective June 1, 1947
regulating
WAGES, HOURS, AND WORKING CONDITIONS FOR WOMEN AND MINORS
in the
M A N U F A C T U R I N G I N D U S T R Y

State of California
Department of Industrial Relations
D I V I S I O N O F I N D U S T R I A L W E L F A R E

515 Van Ness Avenue, San Francisco (2)
404 State Building, Los Angeles (12)
245 Holland Building, Fresno (1)
1122 - Fourth Ave., San Diego (1)
1540 San Pablo Ave., Oakland (12)

TO WHOM IT MAY CONCERN:

TAKE NOTICE: That pursuant to and by virtue of authority vested in it by Sections 1171 to 1203, inclusive, of the Labor Code of the State of California, and after public hearing duly had, notice of said hearing having been duly given in the manner provided by law, the Industrial Welfare Commission, upon its own motion, having found and concluded that the Manufacturing Industry Order, Number 1 NS, enacted by the Industrial Welfare Commission on April 9, 1942, should be altered and amended;

NOW, THEREFORE, The Industrial Welfare Commission of the State of California does hereby alter and amend said Manufacturing Industry Order, Number 1 NS, and does hereby enact its amended order as follows:

No person, as defined in Section 18 of the Labor Code, shall employ any woman or minor in any establishment or industry in which the wages, hours, or working conditions are not in conformance with the standards hereinafter set forth:

1. A P P L I C A B I L I T Y O F O R D E R

This Order shall apply to all women and minors employed in the manufacturing industry whether paid on a time, piece rate, commission, or other basis, except women employed in administrative, executive, or professional capacities.

No woman shall be considered to be employed in an administrative, executive, or professional capacity unless one of the following conditions prevails:

- (a) The employee is engaged in work which is predominantly intellectual, managerial, or creative; which requires exercise of discretion and independent judgment; and for which the remuneration is not less than \$250 per month; or
- (b) The employee is licensed or certified by the State of California and is engaged in the practice of one of the following recognized professions: law, medicine, dentistry, architecture, engineering, teaching, or accounting.



2. DEFINITIONS

(a) "Commission" means the Industrial Welfare Commission of the State of California.

(b) "Division" means the Division of Industrial Welfare of the State of California.

(c) "Manufacturing Industry" means any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part;

EXCEPT when such activities are covered by Orders in the:

- Canning and Preserving Industry;
- Industries Handling Farm Products After Harvest; or
- Motion Picture Producing Industry

(d) "Employ" means to engage, suffer, or permit to work.

(e) "Employee" means any woman or minor employed by an employer.

(f) "Employer" means any person, as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of a woman or minor.

(g) "Minor" means, for the purpose of this Order, a male or female person under the age of eighteen (18) years.

(h) "Hours Worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

(i) "Emergency" means an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action.

3. HOURS

(a) No woman or minor shall be employed more than eight (8) hours during any one day of twenty-four (24) hours or more than forty-eight (48) hours in any one week. Said eight (8) hours of employment must be performed in a period not to exceed thirteen (13) hours, unless the employee resides at the place of employment.



(b) Nothing in Section 3(a) shall prevent the employment of a woman eighteen (18) years of age or over, more than eight (8) hours in any one day or more than forty-eight (48) hours in any one week in an emergency, when the employment is not prohibited by Chapter 3, Article 1 of the State Labor Code, provided that such overtime is compensated for at not less than one and one-half times the employee's regular rate of pay.

(c) No woman employee shall be required to report for work or be dismissed from work between the hours of 10 P.M. and 6 A.M. unless suitable transportation is available. If a meal period occurs during these hours, facilities shall be available for securing hot food or drink, or for heating food and drink, and a suitable, sheltered place shall be provided in which to consume such food and drink.

(NOTE: REFER TO STATE LABOR CODE FOR REGULATIONS GOVERNING SEVENTH DAY EMPLOYMENT AND FOR ADDITIONAL RESTRICTIONS ON WORKING HOURS OF MINORS.)

4. MINIMUM WAGES

(a) Every employer shall pay to each woman or minor employee wages not less than sixty-five cents (65¢) per hour for all hours worked; except that a lesser rate, but not less than fifty cents (50¢) per hour may be paid to:

1. Women, over 18 years of age, during their first two hundred (200) hours of employment in skilled or semi-skilled occupations in which they have had no previous similar or related experience, provided that the number of women employed at such rate shall not exceed ten per cent (10%) of the persons regularly employed in the establishment.
2. Minors, provided that the number of minors employed at such rate shall not exceed ten per cent (10%) of the persons regularly employed in the establishment.

(b) Each day an employee is required to report for work and does report, but is not put to work or is furnished less than half the usual day's work, said employee shall be paid for half the usual day's work at the employee's regular rate of pay, which shall be not less than the minimum wage herein provided.

(c) Every employer shall pay to each employee not less than the applicable



minimum wage for hours worked in each payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

(d) In no case shall gratuities or tips from patrons or others be counted as part of the minimum wage. No employee shall be required to report tips for this purpose.

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(e) The provisions of this section shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

(f) On any day in which an employee works a split shift, sixty-five cents (65¢) per day shall be paid in addition to the minimum wage.

("Split Shift" means a work schedule which is interrupted by non-working periods other than bona fide rest or meal periods.)

5. PERMIT FOR HANDICAPPED WORKERS

A permit may be issued by the Commission authorizing employment of a woman or minor whose earning capacity is impaired by advanced age, physical disability, or mental deficiency, at less than the minimum wage herein provided. Such permits shall be granted only upon joint application of employer and employee.

6. RECORDS

(a) Every employer shall keep at the place of employment, in a manner approved by the Division, accurate information with respect to each employee as follows:

- (1) Name, address, and occupation.
- (2) Birth date, if under eighteen (18) years, and designation as a minor on the payroll record.
- (3) Time record showing actual time employment begins and ends each day, and hours worked daily.
- (4) Total hours worked and total wages paid each payroll period, which shall appear on the same record.

(b) When a piece rate plan is in operation, a schedule of piece work rates must be available in the workroom, and a duplicate piece work record shall be furnished to each employee unless the employer's system of recording is acceptable to the Division.

(c) All required records shall be properly dated, showing month, day, and year, and shall be kept on file by the employer for at least one year.

(d) Every workroom shall be equipped with a clock.

7. CASH SHORTAGE OR BREAKAGE

No employer shall make any deduction from the minimum wage of an employee for any cash shortage, breakage, or loss of equipment, notwithstanding any contract



or arrangement to the contrary, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or wilful act, or by the culpable negligence of the employee.

8. UNIFORMS AND EQUIPMENT

(a) No employee shall be required to contribute directly or indirectly from the minimum wage for the purchase or maintenance of tools, equipment, or uniforms; nor for the laundering and cleaning of uniforms. The term "uniform" includes wearing apparel and accessories of distinctive design or color required by the employer to be worn by the employee as a condition of employment.

(b) When protective garments such as gloves, boots, or aprons are necessary to safeguard the health or prevent injury to an employee, such garments shall be provided and paid for by the employer.

9. MEALS AND LODGING

"Meal" means an adequate serving of a variety of wholesome, nutritious foods.

"Lodging" means living accommodations which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

When meals or lodging are furnished by the employer as part of the minimum wage, they may not be evaluated in excess of the following:

Room Occupied Alone \$3.50 per week

Room Shared \$2.50 per week

Apartment 66 2/3% of the ordinary rental value,
and in no event more than \$75.00 per month.

Meals . . . Breakfast ... 30 cents, Lunch ... 40 cents, Dinner ... 60 cents,

Deductions may not be made for meals not eaten and shall be made only for bona fide meals consistent with employee's work shift.

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10. M E A L P E R I O D

No employee shall be required to work more than five (5) consecutive hours after reporting for work, without a meal period of not less than thirty (30) minutes. An "on duty" meal period will be permitted only when the nature of the work prevents an employee from being relieved of all duty, and such "on duty" meal period shall be counted as hours worked without deduction from wages.

11. R E S T P E R I O D

Every employer shall authorize all employees to take rest periods which, insofar as practicable, shall be in the middle of each work period. Rest periods shall be computed on the basis of ten minutes for four hours working time, or majority fraction thereof. No wage deduction shall be made for such rest periods.

12. D R E S S I N G A N D R E S T R O O M S

(a) Employers shall provide for adequate safe-keeping of employees' outer clothing during working hours, and for their work clothes during non-working hours. When the occupation requires a change of clothing, a suitable space shall be provided where female employees may make such change in privacy and comfort.

(b) When the number of females employed at one time is more than twenty (20) and less than fifty (50) there shall be provided one couch, and thereafter at least one additional couch shall be provided for every one hundred (100) female employees or fraction thereof; except that, when the nature of the work requires standing, one couch must be provided where there are more than ten (10) female employees. Beds in hospital rooms may not be counted in the number of required couches.

(c) Couches shall be placed in suitable rooms, conveniently located, exclusively used by women, and open to them during all working hours. Such rooms shall be properly lighted, ventilated, and heated.

13. D R I N K I N G W A T E R A N D W A S H I N G F A C I L I T I E S

(a) Each place of employment shall be supplied with pure drinking water, convenient to employees. Individual paper cups shall be provided or sanitary drinking fountains shall be installed and so regulated that a jet of at least two (2) inches



shall be constantly available.

(b) For every twenty-five (25) female employees or fraction thereof, there shall be one wash basin or equivalent group washing facilities. Surfaces of this equipment shall be smooth and resistant to stain and shall be kept clean and sanitary. Sufficient soap and either individual cloth or paper towels shall be supplied. Towels used in common are prohibited.

14. TOILET ROOMS

(a) NUMBER. Women's toilet rooms must be so marked and the number of toilets required is as follows:

Where the number of females employed at one time is between:	The number of toilets shall be not less than:
1 - 15*	1
16 - 30	2
31 - 45	3
46 - 60	4
61 - 80	5
81 - 100	6

and thereafter one toilet for every twenty-five (25) female employees or majority fraction thereof.

(*If the entire staff of an establishment numbers less than five (5) and only one toilet is available, it may be used by both sexes.)

(b) GENERAL CONSTRUCTION

1. Toilets shall be of the water pressure type, installed in accordance with approved and customary standards.

2. The entrances to toilet rooms shall be effectively screened so that no toilet compartment is visible from any workroom. Each toilet shall be in a separate compartment of adequate size, so constructed as to provide privacy, and with a door of such dimensions as to permit easy entrance and exit.

3. Toilet compartments shall be thoroughly ventilated to the outside air and shall be adequately lighted.



4. Floors shall be of cement, terrazzo, tile, glazed brick, or other composition which is impervious to moisture, and the angle formed by the floor and wall shall be sealed. Surfaces of walls, partitions, doors, fixtures, toilet seats, bowls, and other equipment shall be smooth and non-absorbent, and all painted surfaces shall be a light color.

(c) SUPPLIES : Toilet paper, in a proper holder, shall be supplied in each compartment. Sanitary napkins shall be readily obtainable at a reasonable price and a suitable means for their disposal shall be provided.

(d) LOCATION Toilet rooms must be conveniently located on the immediate premises and employees shall not be required to walk up or down more than one flight of stairs to reach such rooms. In existing establishments when, in the judgment of the Division, a toilet cannot be located on the premises, relief periods other than required rest periods shall be authorized for women and minors.

15. F I R S T A I D

Adequate first aid supplies must be provided and kept clean and sanitary in a dust-proof container.

16. L I F T I N G

No female employee shall be required or permitted to lift or carry any object weighing in excess of twenty-five (25) pounds, except upon permit from the Division.

17. S E A T S

Suitable seats shall be provided for all female employees. When the nature of the work requires standing, an adequate number of said seats shall be placed adjacent to the work area and employees shall be permitted to use such seats when not engaged in the active duties of their employment.

18. F L O O R S

(a) Unless floors are of wood, cork, rubber composition, or other resilient material, mats or gratings of approved material shall be supplied at all points where women or minors are required to stand at their work.

(b) The floors and stairs of every establishment shall be safe, smooth and



tight.

(c) Where wet processes are employed, the floor must be properly drained. When floors are wet or slippery, racks or gratings of sufficient height and free from hazard shall be provided. If the nature of the employment will not permit the use of racks or gratings, protection for the feet shall be provided by the employer.

19. CLEANLINESS AND UPKEEP

Premises, equipment, and fixtures shall be kept safe, clean, sanitary, and in good repair.

20. LIGHTING

All establishments in which women or minors are employed shall be properly lighted during working hours. Sources of illumination shall be of such nature and so placed that the light furnished will be adequate for efficient work and prevent unnecessary strain on the vision or glare in the eyes of the workers.

21. VENTILATION

Each room in which women or minors are employed shall be thoroughly ventilated and there shall be not less than 500 cubic feet of air per person.

22. TEMPERATURE

The nature of the employment permitting, there shall be maintained in each workroom a minimum temperature of 65° F. and, weather permitting, a maximum of 72° F. If, owing to the nature of the process, excessive heat is created in the workroom, special devices shall be installed to reduce such excessive heat. Where the nature of the employment will not permit a temperature of 65° F., a heated room shall be provided to which employees may retire for warmth.

23 EXITS

Every floor on which women or minors are employed shall have at least two exits, remotely located from each other, access to which is unobstructed. Such exits shall be other than elevators. From the third or higher floors at least one means of egress must be an accepted fire exit, and additional fire exits may be ordered



where necessary. Exits shall be plainly marked and kept unlocked during working hours.

24. ELEVATORS

Elevator service shall be provided so that no female employee shall be required to walk up or down more than two flights of stairs to reach her place of employment.

25. EXEMPTIONS

If, in the opinion of the Commission after due investigation, it is found that the enforcement of any provision contained in Sections 10 to 24 of this Order, would not materially increase the comfort, health, or safety of employees and would work undue hardship on the employer, exemptions may be made at the discretion of said Commission. Such exemptions must be in writing to be effective and can be revoked after reasonable notice is given in writing. Applications for exemptions shall be made by the employer to the Commission in writing.

26. FILING REPORTS

Every employer shall furnish to the Commission and to the Division any and all reports or information which may be required to carry out the purpose of this Order; such reports and information to be verified if and when so requested.

27. INSPECTION

The Commission and duly authorized representatives of the Division shall be allowed free access to any office or establishment covered by this Order to investigate and gather data regarding wages, hours, working conditions, and employment practices and shall be permitted to inspect and make excerpts from any and all records and to question all employees for such purposes.

28. PENALTIES

Failure, refusal or neglect to comply with any of the provisions of this Order is a violation of the Labor Code of the State of California, and is punishable by fine, or imprisonment, or both.

Every employer who employs a woman, eighteen (18) years of age or over, in violation of Section 3 of this Order, shall pay said employee a penalty of double the employee's regular rate of pay for all hours worked in violation thereof.

29. SEPARABILITY

If the application of any provision of this Order, or any Section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Order shall be held invalid or unconstitutional, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional, had not been included herein.

30. POSTING OF ORDER

Every employer shall keep posted, in a conspicuous place, a copy of this Order where it can be read by the women and minor employees.



D A T E D A T Los Angeles, California, this 8th day of February, 1947.

Order 1 NS, enacted April 9, 1942, is hereby rescinded as and of the date when this Order becomes effective.

INDUSTRIAL WELFARE COMMISSION
State of California

John C. Packard, Chairman
Mae Carvell
Leroy E. Goodbody
Mae Stoneman
Eleanor C. Hewlett

Rena Brewster, Chief
Division of Industrial Welfare

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EXHIBIT 4



LEGISLATIVE INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF JENNY S. LILLGE

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate the rulemaking file, or other background material regarding the 1947 revision of Industrial Welfare Commission Orders.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. for the 1947 revision of the Industrial Welfare Commission Orders. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals provided to Legislative Intent Service, Inc.

INDUSTRIAL WELFARE COMMISSION [IWC] ORDERS NO. 1 R, NO. 2 R, & NO. 4 R APPROVED FEBRUARY 8, 1947; EFFECTIVE JUNE 1, 1947:

1. Industrial Welfare Commission Orders:
 - a. 1942/1943 Orders:
 - i. Order No. 1 NS,
 - ii. Order No. 2 NS,
 - iii. Order No. 4 NS,
 - b. 1947 Orders:
 - i. Order No. 1 R
 - ii. Order No. 2 R
 - iii. Order No. 4 R;
2. Industrial Welfare Commission Minutes, from file number 703450, August 4, 1945 through September 7, 1946;
3. Industrial Welfare Commission Minutes, from file number 703451, September 13, 1946 through January 27, 1947;

4. Industrial Welfare Commission Minutes, from file number 703452, dated February 8, 1947;
5. Industrial Welfare Commission Minutes, from file number 703453, dated March 7, 1947, through March 5, 1949;
6. Industrial Welfare Commission file labeled “Transcripts of Public Hearings to Open the Orders 1/11/46 (LA) and 1/19/46 (46),” from file number 764404;
7. Industrial Welfare Commission file labeled “Transcripts of Public Hearings Order 1 – 4/5/46 (LA) and 4/25/46 (SF),” from file number 764406;
8. Industrial Welfare Commission file labeled “Briefs Filed at Public Hearings Order 1 – 4/5/46 (LA) and 4/25/46 (SF) – Folder 1,” from file number 764407;
9. Industrial Welfare Commission file labeled “Briefs Filed at Public Hearings Order 1 – 4/5/46 (LA) and 4/25/46 (SF) – Folder 2,” from file number 764408;
10. Industrial Welfare Commission file labeled “Transcripts of Public Hearings Order 2 – 6/7/46 (SF) and 6/10/46 (SF),” from file number 764409;
11. Industrial Welfare Commission file labeled “Transcripts of Public Hearings Order 3 – 6/7/46 (SF) and 6/10/46 (SF),” from file number 764410;
12. Excerpts regarding Industrial Welfare Commission from the Biennial Reports of the Department of Industrial Relations, 1943-1950:
 - a. Excerpt regarding the Division of Industrial Welfare from the Biennial Report of the Department of Industrial Relations, 1943 – 1944;
 - b. Excerpt regarding the Division of Industrial Welfare and the Division of Labor Law Enforcement from the Biennial Report of the Department of Industrial Relations, 1945 – 1946;
 - c. Excerpt regarding the Division of Industrial Welfare from the Biennial Report of the Department of Industrial Relations, 1947 – 1948;
 - d. Excerpt regarding the Division of Industrial Welfare from the Biennial Report of the Department of Industrial Relations, 1949 – 1950.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of December, 2017 at Woodland, California.



JENNY S. LILLGE

Exhibit 3

1 Ford & Harrison LLP
Daniel B. Chammas, SBN 204825
2 dchammas@fordharrison.com
Alexandria M. Witte, SBN 273494
3 awitte@fordharrison.com
350 South Grand Avenue
4 Suite 2300
Los Angeles, CA 90071
5 Telephone: 213-237-2400
Facsimile: 213-237-2401
6

7 Attorneys for Defendants
SACHS ELECTRIC COMPANY, INC.,
FIRST SOLAR, INC., and
8 CALIFORNIA FLATS SOLAR, LLC

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 JUSTIN GRIFFIN, an individual, on behalf of
himself and all others similarly situated,

13 Plaintiff,

14 v.

15 SACHS ELECTRIC COMPANY, a Missouri
16 corporation; FIRST SOLAR, INC., a Delaware
corporation; CALIFORNIA FLATS SOLAR,
17 LLC, a Delaware Limited Liability Company;
and DOES 1 through 10,

18 Defendants.
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Case No. 17-cv-03778-BLF

**DECLARATION OF MICHAEL REGA IN
SUPPORT OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Date: Oct. 25, 2018
Time: 9:00 a.m.
Courtroom: 3

Action Filed: April 27, 2017
Removed: June 30, 2017

DECLARATION OF MICHAEL REGA

I, Michael Rega, declare as follows:

1. I have personal knowledge of the following, or knowledge based upon records, which are or had been within my custody or control. If called and sworn as a witness, I could and would competently testify thereto. I am currently employed as the Vice President for Sachs Electric Company (“Sachs”). In my capacity as Vice President, I am authorized to make this declaration on behalf of Sachs.

2. Between the time period of about June 2016 until about May 2017, Sachs employed workers on the California Flats Solar Project (the “Project”), located at Jack Ranch, which is private property, in Monterey County, California.

3. There are a number of ways available for employees to commute to work on the Project, including driving themselves by car, carpooling, or taking the bus offered by the General Contractor. Because it is private property, employees entering Jack Ranch must have their work badges scanned at a guard shack near the entrance to the property, and must proceed about 12 miles to one of several parking lots to meet with other employees and then be transported on a buggy to the actual job site where employees would begin installing and working on solar panels on the Project. As such, if an employee did not want to drive himself, carpool, or take the bus, the employee could accept a ride from a third party and be dropped off at the guard shack and Sachs would have arranged for the employee to have been brought to the parking lot.

4. Employees are paid beginning at the point when they board the buggy.

5. Because of the location of the Project, the California Department of Fish and Wildlife (“CDFW”) required a permit before work on the Project could begin. The CDFW imposed rules that had to be followed on the Project because of the presence of two Endangered Species: the San Joaquin Kit Fox and the California Tiger Salamander. Under the California Endangered Species Act, an Incidental Take Permit (“ITP”) needed to be issued because of the effect on the endangered species that the Project was expected to have. A true and correct copy of the ITP permit granted for the Project is attached as **Exhibit A.**

6. The ITP required a biologist to monitor work on the Project to “help minimize and fully mitigate or avoid the incidental take of Covered Species, minimizing disturbance of Covered Species’

1 habitat.” (See, Exhibit A attached, ITP, § 6.2.) The ITP further required “an education program for all
2 persons employed or otherwise working in the Project Area before performing any work,” which “shall
3 consist of a presentation from the Designated Biologist that includes a discussion of the biology and
4 general behavior of the Covered Species, information about the distribution and habitat needs of the
5 Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA
6 including legal protection, recovery efforts, penalties for violations, and Project-specific protective
7 measures described in this ITP.” (*Id.*, § 6.4.)

8 7. The ITP required the Project to “clearly delineate habitat of the Covered Species within
9 the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as
10 necessary to minimize the disturbance of Covered Species' habitat.” (*Id.*, § 6.12.) The ITP also strictly set
11 out the boundaries of the Project and the visitors' access to the Project: “Project-related personnel shall
12 access the Project Area using existing routes, or new routes identified in the Project Description and shall
13 not cross Covered Species' habitat outside of or en route to the Project Area.” (*Id.*, § 6.13.) The ITP also
14 required the restriction of “shall restrict Project-related vehicle traffic to established roads, staging, and
15 parking areas,” and “that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or
16 traversing the roads.” (*Id.* [emphasis added].)

17 8. Moreover, at times, small portions of the 12-mile drive to the Project posted speed limits
18 of 5 miles per hour because of the presence of “kit fox” zones.

19 9. On the Project, as well, because of drought conditions and the risk of fires, smoking was
20 permitted only in designated areas.

21 10. In Sachs' contract with the General Contractor, it was required to observe all of these rules
22 and make sure its employees did as well. A true and correct copy of Sachs' Subcontract is attached hereto
23 as **Exhibit B**. Sachs agreed “to comply with all biological buffers and conditions. These conditions will
24 vary depending on location, species, and site observations. No buffer shall be crossed without [the GC's]
25 approval.” (See Ex. B, Sachs Subcontract, Exh. 1, § 22.) Sachs' employees, in fact, “on their first day
26 assigned to this Project, [were required to] attend a general project and safety orientation conducted by [the
27 general contractor].” (*Id.*, Exh. 3A, § 2.1.)

28 11. Throughout his time working on the Project, Justin Griffin was a member of the

1 International Brotherhood of Electrical Workers (“IBEW”). A true and correct copy of Mr. Griffin’s Hire
2 Form with Sachs regarding his union membership is attached hereto as **Exhibit C**.

3 12. Mr. Griffin worked under the IBEW Local 234 collective bargaining agreement (“CBA”),
4 which designated as hours worked only those hours between when employees reported to work at the
5 buggy and returned on the buggy at the end of their shift. The CBA provides for compensation only after
6 reporting to a location between 8:00 a.m. (reporting time at the parking lot) and 4:30 p.m. (employees’
7 arrival at the parking lot after work). A true and correct copy of the Collective Bargaining Agreement is
8 attached hereto as **Exhibit D**.

9 13. The IBEW did not file a grievance on behalf of either Mr. Griffin himself or any other
10 union member for unpaid wages in connection with the drive between the guard shack and the parking lot
11 at the Project.

12 14. On or about December 13, 2016, Mr. Griffin received a written warning for numerous
13 performance problems, including failure to follow instructions and insubordination as reported by his
14 coworkers and supervisors, and that Plaintiff had to be placed in another crew. A true and correct copy of
15 Mr. Griffin’s written warning of December 13, 2016 is attached hereto as **Exhibit E**.

16 15. Shortly after receiving this write up, Mr. Griffin began missing work. In fact, Mr. Griffin
17 was absent from work multiple times at the very start of 2017, including January 2, January 17, February
18 23, March 1, and March 2, and only showed up for work a total of six (6) days during that very time
19 period; in sum, for the first quarter of 2017, Mr. Griffin only worked about half of the shifts he was
20 scheduled to work. A true and correct copy of Mr. Griffin’s payroll records, showing which days he
21 worked and were thus compensated, is attached as **Exhibit F**.

22 16. Mr. Griffin called out of work on March 1 and 2, 2017, but these absences were not
23 considered by Sachs to be excused under Sachs’ Attendance/Absenteeism Policy. A true and correct copy
24 of Sachs’ Attendance/Absenteeism Policy is attached hereto as **Exhibit G**.

25 17. Mr. Griffin received a subsequent write up on March 3, 2017 when he returned to work,
26 explaining Mr. Griffin was being disciplined for “not follow[ing] instructions,” “insubordination,”
27 “leaving job without permission,” “poor productivity,” “no interest in working,” “complaints from other
28 crew members,” and that there were “other write ups similar to this one.” A true and correct copy of the

1 write up issue to Mr. Griffin dated March 3, 2017 is attached hereto as **Exhibit H**.

2 18. Mr. Griffin was terminated on March 3, 2017, and his Notice of Termination states that he
3 was being terminated for “refus[ing] to work as directed” and “excessive absenteeism.” A true and correct
4 copy of the Notice of Termination for Mr. Griffin, dated March 3, 2017, is attached hereto as **Exhibit I**.

5 I declare under penalty of perjury under the laws of the state of California and the United States of
6 America that the foregoing is true and correct. Executed this 29TH day of May, 2018, at

7 FENTON, MISSOURI.

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10 MICHAEL REGA

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EXHIBIT A



California Department of Fish and Wildlife
Central Region
1234 EAST SHAW AVENUE
FRESNO, CALIFORNIA 93710

California Endangered Species Act
Incidental Take Permit No. 2081-2015-027-04

CALIFORNIA FLATS SOLAR PROJECT

Authority: This California Endangered Species Act (CESA) incidental take permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take¹ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.² CDFW may authorize the take of any such species by permit if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met. (See Cal. Code Regs., tit. 14, § 783.4).

Permittee: California Flats Solar, LLC
Principal Officer: Brian Kunz
Contact Person: Scott Dawson, (949) 394-9175
Mailing Address: 135 Main Street, 6th Floor
San Francisco, California 94105

Effective Date and Expiration Date of this ITP:

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on **February 10, 2049**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 7.7 of this ITP.

¹Pursuant to Fish and Game Code section 86, "take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 (for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "take' ... means to catch, capture or kill").)

²The definition of an endangered, threatened, and candidate species for purposes of CESA are found in Fish and Game Code sections 2062, 2067, and 2068, respectively.

Rev. 2015.3.6.

Project Location:

The California Flats Solar Project (Project) is located north of the intersection of State Route (SR) 41 and SR 46 and northeast of Cholame Valley Road, approximately 25 miles northeast of the City of Paso Robles, in unincorporated Monterey County and San Luis Obispo counties (Figure 1).

Project Description:

The Project includes the construction, operation and maintenance (O&M), and decommissioning of a 280-megawatt (MW) solar power generating facility on approximately 2,367 acres of undeveloped grassland. The Project is comprised of four main components: solar development areas (SDAs), a transmission line corridor, an access road, and a utility corridor (Figure 2). Project activities include grubbing and grading for construction of temporary laydown and staging areas, permanent O&M buildings, substations, switching station, trenching for underground cables and wires, excavation for transmission pole footings and temporary water storage ponds, installation of a temporary above-ground water pipe and water storage tanks, mowing and/or disking and rolling for site preparation, installation of permanent solar modules and overhead transmission lines, construction of new internal roads (including water crossings), improvements to existing access roads (including new/improved water crossings), O&M (excluding O&M activities at the Pacific Gas and Electric Company (PG&E) owned switching station) and decommissioning activities (excluding decommissioning activities at the PG&E switching station), and other activities. Construction activities are anticipated to begin in late summer 2015 and end in December 2016. O&M activities are anticipated to occur from January 2017 to December 2047, with decommissioning activities anticipated to start January 2048 and end February 2049. If the Project is recommissioned, a new ITP or an amendment to this ITP would be required. Project activities include the following:

Construction Period:

- Grubbing and grading for the primary 38-acre construction staging/laydown area, which includes a temporary construction office area. Additional temporary staging/laydown areas will be development within the SDAs, but as construction progresses, these areas will be vacated to allow installation of solar modules.
- The northwest, 4-acre maximum, area will be used throughout the construction phase of the Project, and the southeast, 0.5-acre maximum, area will be used during improvements to SR 41.
- Installation of a temporary, above-ground water pipeline and up to four temporary pumps along the utility corridor (15,840 feet long by 415.25 feet wide). The pipeline will be supported on elevated piles through washes and creeks that are too wide to span unsupported and along upland areas to allow for wildlife movement.

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CALIFORNIA FLATS SOLAR, LLC
CALIFORNIA FLATS SOLAR PROJECT

1. **Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Environmental Impact Report (EIR) (SCH No.: 2013041031) certified by Monterey County on February 10, 2015 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
3. **LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA) (Notification No.: 1600-2015-0041-R4, as amended) for the Project that will be executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
4. **ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in any subsequent Biological Opinion prepared for the Project pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.
5. **ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.

6. **General Provisions:**

6.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.

6.2. Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collecting, and handling of the Covered Species. The Designated

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Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species, minimizing disturbance of Covered Species' habitat, and conducting all Covered Activities that may result in take of the Covered Species (i.e., burrow excavation, trapping, handling, relocating, etc.). Permittee shall obtain written approval of the Designated Biologist from CDFW before starting Covered Activities and if the Designated Biologist must be changed.

6.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.

6.3.1. Biological Monitors. The Designated Biologist(s) may authorize biological monitors to assist in ITP compliance efforts, under the direct supervision of the Designated Biologist(s). The Designated Biologist(s) is responsible for assuring that any biological monitors working under his or her direct supervision is knowledgeable and experienced in the biology and natural history of the Covered Species, the Conditions of Approval of this ITP, the definition of "take" in CESA, and in implementation of standard avoidance and minimization measures used on construction projects in Covered Species' habitat.

6.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations, and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work (including O&M) in the Project Area.

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6.12. Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.

6.13. Project Access. Project-related personnel shall access the Project Area using existing routes, or new routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.

6.14. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.11.

6.15. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site. Any hazardous materials stored on-site shall be the minimum necessary for Project implementation and shall be stored in contained areas that preclude exposure to wildlife.

6.16. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.

6.17. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all fill material and construction refuse, including, but not limited to, broken equipment parts, wrapping material,

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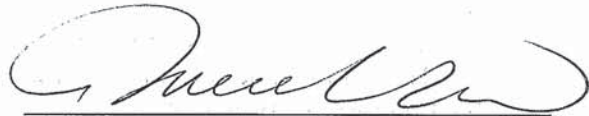
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

Attachments:

FIGURE 1	Project Location Map
FIGURE 2	Project Area Map
FIGURE 3	Map of Potential CTS Breeding Ponds
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Declining Amphibian Populations Task Force Fieldwork Code of Practice
ATTACHMENT 3A, 3B	Proposed Lands for Acquisition Form; Habitat Management Lands Checklist
ATTACHMENT 4	Letter of Credit Form
ATTACHMENT 5	Mitigation Payment Transmittal Form

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 10/23/15




Julie Vance, Regional Manager
Central Region

Incidental Take Permit
No. 2081-2015-027-04
CALIFORNIA FLATS SOLAR, LLC
CALIFORNIA FLATS SOLAR PROJECT

EXHIBIT B

EXECUTED

RECEIVED
JUN 22 2015
BY: 

McCarthy Subcontract
03-24-2015 Rev.

EXECUTED

McCARTHY SUBCONTRACT

THIS AGREEMENT made this 4th day of May, 2015, by and between **McCarthy Building Companies, Inc.**, 6225 North 24th Street, Suite 200, Phoenix, Arizona 85016, Phone (480) 449-4700, hereinafter referred to as "McCarthy", and **Sachs Electric Company**, 1572 Larkin Williams Road, St. Louis, Missouri 63026, Attn: Steve Gorman, Phone (636) 532-2000, hereinafter referred to as "Subcontractor", to perform part of the Work on the following Project:

PROJECT: CALIFORNIA FLATS SOLAR FACILITY
PARKFIELD & TURKEY FLATS ROAD OFF HWY 46
SAN MIGUEL, CALIFORNIA 93451
MCCARTHY PROJECT NO.: 006258.000

OWNER: CA FLATS SOLAR 150, LLC TOGETHER WITH CA 130, LLC
350 WEST WASHINGTON STREET, 6TH FLOOR
TEMPE, ARIZONA 85281

ARCHITECT: TAYLOR RYMAR
60 EAST RIO SALADO PARKWAY
TEMPE, ARIZONA 85281

ARTICLE 1 SCOPE OF WORK

1.1 McCarthy employs Subcontractor as an independent contractor, to perform the following part of the Work which McCarthy has contracted with the Owner to provide on the Project:

Electrical

See EXHIBIT 1 for an expanded description of Subcontractor's scope of work.

Subcontractor agrees to perform such part of the Work under the general direction of McCarthy and subject to the final approval of the Architect/Engineer or other specified representative of the Owner, in accordance with and reasonably inferable from the Contract Documents (hereinafter called "Subcontractor's Work"). Subcontractor will furnish all of the labor and materials, along with competent supervision, shop drawings and samples, tools, equipment, protection, hoisting, and scaffolding which are necessary for such performance.

IN WITNESS WHEREOF the parties hereto have executed this Agreement, the day and year first above written, which together with the Contract Documents as defined herein represent the entire and integrated agreement between the parties hereto, supersedes all prior negotiations, representations or agreements, oral or written, and may only be amended or modified as defined in Article 4 hereof.

SUBCONTRACTOR SPECIFICALLY ACKNOWLEDGES THAT SUBCONTRACTOR HAS RECEIVED, REVIEWED AND ACCEPTED EXHIBITS:

- EXHIBIT 1 – EXPANDED DESCRIPTION OF SUBCONTRACTOR’S SCOPE OF WORK
- EXHIBIT 2 – LIST OF CONTRACT DOCUMENTS
- EXHIBIT 3 – LIEN AND CLAIM WAIVER AND AFFIDAVIT FORMS
- EXHIBIT 3A – SAFETY ADDENDUM TO MCCARTHY SUBCONTRACT
- EXHIBIT 4 – PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND FORMS
- EXHIBIT 5 – PROJECT LABOR AGREEMENT – ATTACHMENT A
- EXHIBIT 6 – SUBCONTRACTOR SPECIFIC INSURANCE REQUIREMENTS

NOTICE TO SUBCONTRACTOR: THIS AGREEMENT IS CONTINGENT UPON CA FLATS SOLAR 130, LLC AND CA FLATS SOLAR 150, LLC (OWNER) ISSUING A FULL NOTICE TO PROCEED TO MCCARTHY BUILDING COMPANIES, INC. SUBCONTRACTOR IS NOT ENTITLED TO ANY COMPENSATION OF ANY COSTS INCURRED PRIOR TO THE NOTICE TO PROCEED BEING OFFERED TO MCCARTHY BY CA FLATS SOLAR 130, LLC AND CA FLATS SOLAR 150, LLC (OWNER) WITH THE EXCEPTION BEING FOR ANY PART A SERVICES AS DESCRIBED HEREIN.

SACHS ELECTRIC COMPANY

By: *Steve J. Doman*

Title: *Vice President*

Date: *6/19/15*

MCCARTHY BUILDING COMPANIES, INC.

By: *[Signature]*

Title: *Vice President*

Date: *6/16/15*

EXHIBIT 1
SACHS ELECTRIC COMPANY
EXPANDED DESCRIPTION OF SUBCONTRACTORS SCOPE OF WORK

Provide all labor, materials, tools, equipment supervision and appurtenances as required to perform the **Electrical Work in Phase A** in accordance and reasonably inferable from the Contract Documents, complete and without exception unless otherwise noted below, including, but not limited to the following:

Scope of work shall include but not necessarily limited to:

1. A zero waste goal has been established for this project. Any construction debris generated by the work will be placed in the appropriate jobsite dumpster provided by McCarthy for recycling unless specified otherwise in this subcontract. Subcontractor will bear the costs associated with the remediation of any incorrectly disposed items, which cause disposal rejection and/or fine.
2. Provide protection for conduits and exposed cable during construction.
3. Hoisting for own scope of work.
4. Provide drinking water and distribution of water for all workers contracted under Sachs Electric.
5. Subcontractor acknowledges that they have reviewed the construction schedule and has included in their bid everything necessary to meet or exceed the project schedule.
6. Subcontractor shall furnish submittals, material & equipment delivery dates as required to obtain approvals and maintain project schedule.
 - i. The performance by Subcontractor of its scope of work shall be in the manner, sequence and timing as required by McCarthy to coordinate with the work and the services provided by all others for the Project so as not to delay the successful completion of the Block related Operational Tests, Functional Tests and Capacity Tests to achieve Block Turnover Milestones by the applicable Guaranteed Block Turnover Dates. Subcontractor shall be liable for damages if they are assessed against McCarthy.
 - ii. If McCarthy fails to achieve Block Turnover Milestone by the Guaranteed Block Turnover Date due to non-performance by Subcontractor, which, in turn leads to delay in McCarthy achieving Guaranteed Phase Substantial Completion Date or Guaranteed Partial Phase Substantial Completion date for Phase A, then Subcontractor may be charged additional damages outlined in item #7.
7. If Subcontractor's non-performance of the scope of work delays successfully passing of the Capacity Test to achieve Phase Substantial Completion (as well as Partial Phase Substantial Completion) Milestone by the Guaranteed Phase (or Partial) Substantial Completion Date, Subcontractor may be liable for damages if they are assessed against McCarthy.
8. All material and labor costs secure for the life of the project.
9. Layout for own scope of work. Primary Control to be provided by McCarthy.
10. Design Reviews and Coordination Meetings included.
11. Coordination with McCarthy for Power Conversion Station (PCS) vault/skid rough in and sequencing.
12. All electrical signage and labeling as required per the contract documents.
13. Testing in accordance with project specifications and the Testing Matrix.
14. Equipment-specific pre-functional checklists (at the Block and Plant Phase level) will be developed and issued to Contractor for approval. The pre-functional checklists shall address installation, testing and functional proving of various components, methods, vendors' requirements, applicable codes and standards, and good engineering practice requirements.
15. All utility costs associated with Subcontractor's Construction Facilities.
16. Subcontractor has visited the project site and is fully cognizant of all existing jobsite conditions and has made such investigations as they see fit to fully understand the operations to be carried out under this agreement. Subcontractor fully understands the facilities, physical conditions and restrictions attending the work under this agreement. Claims for additional compensation and/or extensions of time because of the Subcontractor's failure to follow the foregoing procedure will not be allowed.
17. Cost of construction documents are the responsibility of Subcontractor. McCarthy Building Companies, Inc. will provide all relevant contract documents in electronic format.

18. Subcontractor to furnish and maintain traffic control and safety barriers including flagmen as required to perform own work safely as determined by McCarthy Building Companies, Inc.
 19. Every effort shall be made to standardize mechanical and electrical equipment, specifically including combiner boxes and sectionalizing cabinets as well as instrumentation.
 20. Sanitation facilities will be provided and serviced by McCarthy. It is the Subcontractors responsibility to respect and not abuse such facilities or this service will be charged to this Subcontractor. McCarthy to coordinate with Subcontractor to insure adequate quantity is distributed in close proximity of work areas to minimize travel time to/from working areas.
 21. Subcontractor shall provide accurate and complete daily report for each day work is performed on-site. Reports are due by close of business on day work is complete on forms approved by McCarthy.
 22. Contractors to comply with all biological buffers and conditions. These conditions will vary depending on location, species, and site observations. No buffer shall be crossed without McCarthy's approval beforehand.
 23. Time and sequence changes due to minor biological buffer compliance items shall be expected and time/any cost shall not be requested by Subcontractor for these minor events.
 24. McCarthy shall provide dust control in roadways and typical working areas. Subcontractor shall comply with all dust control plans and regulations relating to Subcontractor's scope of work.
 25. Monitoring of earthwork activities may be required and extent of monitoring shall be determined by preconstruction surveys. Monitoring of earthwork activities shall be expected and Subcontractor has considered all schedule and cost effects in this Subcontract Agreement.
 26. Subcontractors shall work with McCarthy to create a plan to minimize the needs for a park and ride facility for the project.
 27. Subcontractor will designate a commissioning person whose sole responsibility will be to work with McCarthy commissioning team during all phases of the commissioning. This person will have the authority to direct Subcontractor's field personnel to assist in any portion of the commissioning process. McCarthy's commissioning team leader retains the right to reject and or accept Subcontractor's commissioning person. Subcontractor does not have the authority to remove designated person unless it has been discussed with McCarthy and has a competent replacement.
 28. If work requires penetrations, it will be Subcontractor's responsibility for sealing of penetration and refurbishment of any damage incurred by adjacent surfaces.
 29. Commissioning may require after hours work. Subcontractor shall cover any needed spot overtime to support commissioning. Excessive overtime may require reimbursement of the premium portion of the wage if the overtime requirement is not related to Subcontractor's performance.
 30. Installation, testing, and assistance with commissioning of all equipment/instruments furnished by others.
 31. All wiring and terminations for all field mounted instruments.
 32. Lock out tag out procedure to be outlined in Subcontractor's Site Specific Safety Plan and maintained throughout the project.
 33. Conduit stub-ups at all transitions to below grade.
 34. Provide power and data hook-up services for any McCarthy field offices, First Solar field offices, Security office(s), Medical field office, and other facilities as necessary located in Phase A. This is limited to (4) Trailers.
 35. Temporary pole mounted lighting at construction trailer area as well as one site entrance light at each entrance.
 36. Subcontractor will utilize labor force in accordance with the Project Labor Agreement.
 37. Base Bid is based on fifty two (52) PCS's and 171,720,000 Watts DC/130 MWAC
- PV Modules & Combiner Boxes Inclusions, but not limited to:
38. Furnish and install fused combiner boxes. Manufacturer to be approved by McCarthy prior to purchase and uniform between Phase A and Phase B. 10% spare fuses are included.
 39. McCarthy to offload, inventory, and store modules at designated areas at the blocks. Subcontractor to un-package and install modules. McCarthy to dispose of packaging material.
 40. 0.2% Module breakage allowed for install. Subcontractor will be responsible for the cost of replacing module breakage exceeding 0.2%.

EXHIBIT 3A
SAFETY ADDENDUM TO McCARTHY SUBCONTRACT

- 1. **Pre-Engagement Requirements**
Prior to the start of work on the Project, Subcontractor shall:
 - 1.1 Provide to McCarthy a list of all first-aid/CPR trained employees on the Project, including expiration dates, and update when requested by McCarthy.
 - 1.2 Submit to McCarthy, and update as required, Subcontractor's Hazard Communication Program, Material Safety Data Sheets (MSDS) and chemical inventory list for the Project.
 - 1.3 Provide to McCarthy a copy of its job specific Injury and Illness prevention plan.

2. **Project and Safety Orientation**
2.1 All Subcontractor employees, on their first day assigned to this Project, shall attend a general project and safety orientation conducted by McCarthy. This general project and safety orientation shall not relieve Subcontractor of its responsibility to also, at that same time, conduct specific orientation related to its own work. Subcontractor shall conduct a project and safety orientation for each of its employees on the employee's first day assigned to this Project.

- 3. **Drug Testing**
3.1 Subcontractor shall have a written company policy for Drug and Alcohol Abuse. Subcontractor shall maintain and provide McCarthy upon request evidence that Subcontractor employees have passed a drug and alcohol test performed by an organization licensed to perform such testing.

- 4. **Accident Notification**
4.1 McCarthy's On-Site Safety Representative or Jobsite Superintendent shall be notified immediately when an accident has occurred. An accident report is to be furnished to McCarthy no later than twenty-four (24) hours after the occurrence.

- 5. **Clothing and Personal Protective Equipment**
5.1 Subcontractor is responsible for providing all personal protective devices for its employees, i.e., hard hats, safety harnesses, lanyards, ear plugs, face shields, respirators, safety glasses, high visibility vest/shirts, etc.

- 5.2 Unaltered hard hats are required at all times, except in break areas, offices or canteens. If Subcontractor has the need to use a face shield, welding or cutting shields or other such devices, then Subcontractor must provide and use the type which attach to hard hats so that helmets may be worn 100% of the time.
- 5.3 Construction work shoes shall be worn at all times during the course of all construction activities. Tennis shoes, track shoes, sandals, loafers, and hush puppies are not proper work shoes.
- 5.4 OSHA acceptable safety glasses shall be worn at all times except in break areas, construction offices or canteens.
- 5.5 High visibility vests or shirts shall be worn at all times except in break areas, construction offices or canteens.
- 5.6 In addition to eye protection referenced in 5.4, a full face-shield must be worn where a danger of flying debris or splashing exists.
- 5.7 Tank tops, low-cut shirts or sleeveless shirts are prohibited on the Project. Loose fitting garments, shirt tails or floppy sleeves must be contained.
- 5.8 Long pants are required at all times.
- 5.9 OSHA acceptable hearing and respiratory equipment shall be worn as required.
- 5.10 All employees, when exposed to a fall of 6 foot or greater, shall wear a full body harness with appropriate lanyard(s) The full body harness lanyards and connection points shall be as provided under Federal, State and/or Local safety related laws or regulations. The lanyard(s) shall be securely attached to the employee's harness and appropriate connection point 100% of the time while the exposure exists. All vertical and horizontal lifelines used must be commercially manufactured or designed by a licensed engineer, and installed per the manufacturer's or designer's instructions.
- 5.11 All personnel are required to tie off when operating or working from an elevated work platform of any kind, including scissor lifts. All elevated work platforms, including scissor lifts, must be equipped with manufacturer authorized anchor points.
- 5.12 Subcontractor shall have a glove use policy for their employees that address

EXHIBIT C

New Hire Information Form

Name
 (Last, First Middle)

Griffin, Justin A.

Street Address

REDACTED

City

REDACTED

State REDACTED

Zip

REDACTED

Date of Birth

1/17/80

SSN

REDACTED

Home Telephone

()

Cell Phone

REDACTED

Personal Email

Emergency Contact Information

Contact
 Name/Relationship:

Stacy Hodges - Brother

REDACTED

REDACTED

Phone/Email:

REDACTED

Union Employees Only

Home Local	234	Job Local	234	Appr %		Classification	cw
------------	-----	-----------	-----	--------	--	----------------	----

The following is used for Government reporting purposes only. Please complete all sections.

Gender

Male

Female

Veteran Status

(check all that apply)

None

Armed Service Medal Veteran

Disabled

Recently Separated Veteran (last 3 years)

Date of Separation: _____

Other Protected Veteran (served during war or campaign for which a campaign badge was authorized)

Race/Ethnicity (check all that apply)

White

Hispanic or Latino

Black or African American

Asian

Native Hawaiian or Other Pacific Islander

American Indian or Alaska Native

Two or More Races

Employee Number: _____

Hire Date: _____ Orient. Time: _____

Drug Test Y/N Job/Company: _____

IBEW LOCAL UNION 234

Member Copy

10300 Merritt Street, Castroville CA 95012

Job # 00009313

JOB REFERRAL SLIP

Employee: Griffin, Justin A

S.S.N.: **REDACTED**

Classification: CW I

Wage: \$19.56

Foreman: Jose Torres

Dues Check-Off Authorization has been executed and is on file.

Employer: Sachs Electric Company

Deduct: 3.00% Yes No

Job Site: California Flats Solar Project

Start Date: 11/10/16 07:30 AM

9855 E. Highway 41 Shandon, CA 93461

Phone: (314) 278-7833

Comments:

As a new hire, bring acceptable, unexpired documentation. US Passports are recommended or Driver's License, I.D., and Social Security Card. Refer to I-9 for a complete list.

EXHIBIT D

INSIDE AGREEMENT

by and between

The Monterey Bay California Chapter

of the

National Electrical Contractors Association (NECA)



and



International Brotherhood of Electrical Workers (IBEW)

Local Union No. 234

Effective June 1, 2015 – May 31, 2018

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INSIDE AGREEMENT

Agreement by and between the Monterey Bay California Chapter of the National Electrical Contractors Association (NECA) and Local Union No. 234, IBEW.

It shall apply to all firms who sign a Letter of Assent to be bound by the terms of this Agreement.

As used hereinafter in this Agreement, the term "Chapter" shall mean the Monterey Bay California Chapter of NECA and the term "Union" shall mean Local Union No. 234, IBEW.

The term "Employer" shall mean an individual firm who has been recognized by an assent to this Agreement.

BASIC PRINCIPLES

The National Electrical Contractors Association and the International Brotherhood of Electrical Workers having common and sympathetic interest in the Electrical Industry and wishing to further the use of electricity in a manner safe to life and property while protecting the legitimate interests of both the public and the people engaged in the industry, realize that a system of maintaining harmonious relations and continuous peace between the Employer and the Employee is necessary, and in good faith agree to adjust any differences by rational and common sense methods.

The Employer and the Union recognize the desirability of providing continued employment in the Electrical Construction Industry and the necessity of having available at all times, a supply of competent Employees with experience and training in the various types of work covered by this Agreement.

In accordance with the Federal Government Executive Orders, the Fair Employment Practices Act of the State of California, and other applicable laws, the parties to this Agreement are obligated not to discriminate against Employees or applicants for employment because of race, religion, color, age, sex, creed, national origin or disability.

Now, therefore, in consideration of the mutual promises and agreements herein contained, the parties hereto do agree as follows:

ARTICLE I STANDARD CIR EFFECTIVE DATE/ CHANGES/GRIEVANCES/DISPUTES

EFFECTIVE DATE:

Section 1.01. This Agreement shall take effect June 1, 2015, and shall remain in effect until May 31, 2018 unless otherwise specifically provided for herein. It shall continue in effect from year to year thereafter, from June 1 through May 31 of each year, unless changed or terminated in the way later provided herein.

CHANGES:

Section 1.02(a). Either party or an Employer withdrawing representation from the Chapter or not represented by the Chapter, desiring to change or terminate this Agreement must provide written notification at least 90 days prior to the expiration date of the Agreement or any anniversary date occurring thereafter.

Section 2.25 JOURNEYMAN RECALL

An employer shall have the right to recall for employment any former employee that the employer has laid off, provided that:

- (1) The former employee is in the highest level Group on the referral list containing applicants available for work, regardless of the individual's position on the list; or,
- (2) The recall is made within 30 days from the time of layoff;
- (3) The former employee has not quit his most recent employer under this agreement within the two weeks prior to the recall request;
- (4) As a former employee was employed 30 days or more prior to layoff;
- (5) And the former employee is not an apprentice.”

**ARTICLE III
HOURS/WAGES/WORKING CONDITIONS**

Section 3.01. WORK DAY AND WORKWEEK

- (a) Eight (8) hours shall constitute a days work from 8:00 a.m. to 12:00 noon, and from 12:30 p.m. to 4:30 p.m. on Monday through Friday. A paid rest break shall be provided to all employees approximately midway through the morning and afternoon work periods. The rest periods shall be no more than ten (10) minutes in length and are to be taken in designated break areas as dictated by the owner. Additional rest periods shall be furnished if work continues outside of the normal workday.
- (b) The first two (2) hours of overtime that is worked contiguous or in conjunction with the scheduled work day, either before or after, and up to eight (8) hours on Saturday between 8:00 a.m. and 4:30 p.m. may be worked at the time and one-half (1 ½) rate of pay.
- (c) Time worked outside of (a) and (b) above and on Sundays and Holidays as set forth in 3.10 shall be paid at double (2x) rate of pay.
- (d) An Employee reporting to the shop at the end of the regular workday shall be at the shop by 4:30 p.m. or the applicable overtime rate shall apply.
- (e) Employees shall be required to report to an assigned area designated by the Employer. All Employees that are part of an assigned crew shall report to the same assignment area which shall be a job shack or a company owned gang box. This location shall not be more that 1,000' from the parking area. If the parking area is further than 1000 feet from the assignment area, the employee will walk in on his/her time and will walk out on the employer's time. The applicable rate of pay shall apply.

**ARTICLE XVII
CODE OF EXCELLENCE**

Section 17.01. The parties to this Agreement recognize that to meet the needs of our customers, both employer and employee must meet the highest levels of performance, professionalism, and productivity. The Code of Excellence has proven to be a vital element in meeting the customers' expectations. Therefore each IBEW local union and NECA chapter shall implement a Code of Excellence Program. The program shall include minimum standards as designed by the IBEW and NECA.


SEPARABILITY CLAUSE

Should any provision of this Agreement be declared illegal by any court of competent jurisdiction, such provisions shall immediately become null and void, leaving the remainder of the Agreement in full force and effect and the parties shall, thereupon, seek to negotiate substitute provisions which are in conformity with the applicable laws.

INSIDE AGREEMENT

SIGNED FOR THE CHAPTER:
The Monterey Bay California
Chapter, N.E.C.A., Inc.

SIGNED FOR THE UNION:
International Brotherhood
of Electrical Workers
Local Union No. 234


Date 5-19/15
Eric Tonnesen,
President


Date 5-13-15
Dennis M. Ihnot,
President


Date 5/8/15
Jerri L. Champlin,
Executive Manager


Date 5-8-15
Andy Hartmann,
Business Manager and Financial Secretary

EXHIBIT E

EMPLOYEE DISCIPLINARY WARNING (CHECK ONE - VERBAL WRITTEN)

The following employee was given a notice of warning and informed that subsequent violations would be cause for discharge.

NAME: JUSTIN GRIFFIN JOB NAME: CAL FLATS SOLAR PROJECT

EMPLOYER: Sachs Electric Company DATE: 12-13-16

CHECK THE VIOLATIONS BELOW THAT THE EMPLOYEE IS GUILTY OF:

- Absenteeism with out notice or excuse
- Carelessness affecting safety
- Defective Work
- Destruction of property
- Dishonesty
- Does not follow instructions
- Drinking on the job
- Failure to comply with job work rules
- Failure to use safety equipment
- Falsifying work hours or work performed
- Fighting on the job
- Improper Conduct
- Inability to follow job instructions
- Insubordination
- Leaving job without permission
- Not capable of performing job assignment
- Poor housekeeping
- Poor productivity *(MK)*
- Reporting to work under the influence of alcohol or drugs
- Tardiness
- Violation of safety rules
- Other

Explain below why the warning was given, setting forth all the facts in detail: Clarification: in the buggy

FOREMAN ASKED JUSTIN TO CHANGE SEATS. BECAME AN ISSUE BY YELLING BACK TO FOREMAN. OTHER ISSUES HAVE BEEN REPORTED BUT TAKEN CARE OF. MOVING FORWARD HAS BEEN PLACED IN ANOTHER CREW

Employee: I have read this warning and agree to correct the situation. I understand that future violations may be cause for discharge.

[Signature]
Employee Signature

G.F. Mike Kinloch
G.F., FM, or PM Signature
G.F. MIKE KINLOCH
G.F., FM, or PM Printed Name

Copies distributed to: Employee, Local, NECA, Labor Office

Form located on J: Drive\Labor\FORMS

EXHIBIT F

Justin Griffin Days Worked and Earnings at Cal Flats										
DAY										
WORKED	UNION#	REG RATE	REG HRS	OVT HRS	DT HRS	REG GROSS	OVT GROSS	DT GROSS	TOTAL GROSS	
11/10/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
11/11/2016	234CW	19.56	0	0	8	-	-	312.96	312.96	
11/12/2016	234CW	19.56	0	0	8	-	-	312.96	312.96	
11/13/2016	234CW	19.56	0	0	8	-	-	312.96	312.96	
11/14/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
11/15/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
11/16/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
11/17/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
11/18/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
11/19/2016	234CW	19.56	0	8	0	-	234.72	-	234.72	
11/23/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
11/25/2016	234CW	19.56	0	0	8	-	-	312.96	312.96	
11/29/2016	234CW	19.56	2	0	0	39.12	-	-	39.12	
11/30/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
12/1/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
12/2/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
12/3/2016	234CW	19.56	0	8	0	-	234.72	-	234.72	
12/4/2016	234CW	19.56	0	0	8	-	-	312.96	312.96	
12/5/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
12/6/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
12/7/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
12/8/2016	234CW	19.56	2.5	0	0	48.90	-	-	48.90	
12/12/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
12/13/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
12/14/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
12/17/2016	234CW	19.56	0	2	0	-	58.68	-	58.68	
12/19/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
12/20/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
12/21/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
12/22/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
12/27/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
12/28/2016	234CW	19.56	8	0	0	156.48	-	-	156.48	
1/3/2017	234CW	19.71	4	0	0	78.84	-	-	78.84	
1/28/2017	234CW	19.71	0	8	0	-	236.52	-	236.52	
1/31/2017	234CW	19.71	8	0	0	157.68	-	-	157.68	
2/1/2017	234CW	19.71	8	0	0	157.68	-	-	157.68	
2/14/2017	234CW	19.71	8	0	0	157.68	-	-	157.68	
2/15/2017	234CW	19.71	8	0	0	157.68	-	-	157.68	
3/3/2017	234CW	19.71	4	0	0	78.84	-	-	78.84	
			220.5	26	40	0	\$ 4,318.98	\$ 764.64	\$ 1,564.80	\$ 6,648.42

EXHIBIT G

SACHS ELECTRIC COMPANY - STANDARD JOB WORK RULES

CALIFORNIA FLATS SOLAR FACILITY

1/5/16

Sachs Electric Company strives to deliver high quality service to our clients. Therefore, all employees are expected to conduct themselves in a manner which will further this objective. Any employee who disregards or fails to conform to these work rules and regulations may be subject to disciplinary action, up to and including termination. Although some offences are more severe than others, and some may result in immediate termination, a third warning, regardless of severity, will result in immediate termination.

The following is an illustrative list of various rules and offenses that can lead to disciplinary action, but the list is not all-inclusive.

1. JOBSITE ACCESS: Parking is allowed in designated contractor parking areas only. Bus will leave the parking lot at 6:30 and 6:45 am promptly. If you miss the bus, you will need to sign in at the office.
2. SAFETY: The company has zero tolerance for safety violations. Disregard of safe work practices, failure to use furnished safety equipment, or willfull violations of OSHA & job safety rules can result in immediate discharge. Employees should not be negligent or careless in the performance of their job responsibilities. Hardhats, safety glasses, and gloves are required for work.
 - a. Employees must immediately report any on-the-job injury, incident, accident or near miss regardless of severity to their supervisor. Failure to follow this procedure will be considered grounds for immediate termination.
3. APPROPRIATE WORK CLOTHING: Appropriate work clothing consists of sturdy work boots, long pants, and shirt with sleeves.
4. CELL PHONES AND/OR ELECTRONIC DEVICES: Personal cell phones and/or electronic devises may not be used during working hours. Cell phone use is only allowed during lunch and breaks. Therefore personal cell phones must be left in the break trailers and are not allowed outside of designated break areas.
5. WORK AREA: Employees shall stay in their assigned work areas, going about the installation of the work as directed by their supervisor. Employees who leave their assigned work areas, or who leave the workplace or jobsite without a supervisor's authorization for reasons not pertaining to work-related activities, may be subject to disciplinary action, up to and including termination.
6. WORKING HOURS: The standard work day begins at 7:00am and ends at 5:30pm. Employees shall be at their assigned work place and ready to work at their designated starting time, and shall remain at work until their regular quitting time. If you are late or need to leave early, you must sign in/out at the jobsite office.
 - a. BREAKS: When working 10 hour days a 15 minute break is allowed in the morning and afternoon in the designated areas.
 - b. LUNCH BREAK: Lunch break will be observed from 12:00 – 12:30. Pick up time for lunch shall be no early than 11:50. Any hot work activities must cease by 11:30, or supervisors must approve work to be performed between 11:30 – 12:00pm.

7. ATTENDANCE/ABSENTEEISM: **CALL IN NUMBER (813)-200-3348**
 Employees shall notify the jobsite by phone no later than start time, if they are going to be late or absent. Regular or predictable attendance is essential for the successful completion of the project. Therefore, the following disciplinary action will take place for unacceptable attendance:
One (1) Tardy/Early Out – Verbal / Written Warning
Two (2) Tardy/Early Out – Written Warning
Three (3) Tardy/Early Out – Termination

One (1) Unexcused Absence – Written Warning

Two (2) Unexcused Absence – Termination

Excessive Absenteesim (excused or unexcused) – Warning and /or Termination

Unexcused Absence = No Call/No Show; Jury Duty – with no prior notice; Sick Day with no call

Excused Absence = Absence with call in; Jury Duty with prior notice; Sick Days with call in, up to 3 consecutive days; after 3 days, a doctor’s note will be required to return to work, no doctor’s note will result in 3 unexcused absences.

YOU MUST CALL IN EACH DAY THAT YOU ARE ABSENT.

- 8. **CONDUCT:** Employees shall treat all others on the site with courtesy and respect. Employees shall not discriminate or harass anyone on the jobsite due to race, color, national origin, sexual orientation, citizenship status, disability, religion or age, in accordance with the Company’s policy and state/federal laws (Refer to the Company’s EEO and Non-Harassment Policies). Any employee who engages in conduct that violates the Company policy will be subject to disciplinary action including immediate termination.

Other prohibited acts that will result in disciplinary action up to and including immediate termination, include, but are not limited to the following:

- a. Poor Productivity
 - b. Fighting, horseplay, disruptive behavior, or insubordination
 - c. Possession of firearms or dangerous weapons
 - d. Possession, or use of alcohol or narcotics at anytime during normal work day
 - e. Violation of Drug Testing Policy
 - f. Gambling or possession of gambling material
 - g. Falsification of records, facts, or information
 - h. Theft or willful damage to Company property or the property of others
 - i. Violation of Scrap Material Policy
 - j. Failure to follow verbal or written instructions of supervision
 - k. Violations of Sachs/customer/owner rules or regulations
 - l. Safety Violations
 - m. Unauthorized use of Sachs vehicles
 - n. Discrimination in any form
 - o. Sexual harassment
 - p. Unlawful acts
 - q. Badging in/out for others
 - r. Personal use of cell phone and/or any other electronic device during working hours, except for lunch and break time
- 9. **HARDHATS:** Hardhats will be worn in a fashion they are made to be worn with the bill to the front. The Sachs Electric logo must be visible. No additional stickers other than the IBEW Bug, the American Flag, and job site issued are permitted.
 - 10. **SITE VEHICLES:** Site Vehicles are not allowed in contractor parking lots.
 - 11. **SMOKING:** Smoking is allowed only in designated areas only. No additional “smoke breaks” will be tolerated outside of breaks/lunch.

I have read and acknowledge the abovementioned Sachs Electric Company “Standard Job Work Rules”. I will understand that my signature below affirms my understanding of the company policy.

Signature

Date

Print Name



Sachs Electric
employee owned

Work Safe Program



Operating Safety Procedures
Work Safe Program

Revision 1
December 2005

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Revised December 2003

 Sachs Electric <i>employee owned</i>	Operating Safety Procedures Work Safe Program	Revision 1 December 2005
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INTRODUCTION

The Sachs Electric Family of Companies' Work Safe Program is designed to protect you from injury and to minimize incident based financial losses. The concept of loss control is directed at property damage or loss, as well as injurious and potentially injurious accidents.

This Work Safe Program Manual has been prepared to provide guidelines for the implementation of the Work Safe Program at all Sachs Electric work sites. The statistical record of the construction industry shows that an effective safety program will create a safe working environment that will produce an efficient and economical operation.

It is our philosophy at Sachs that the most important factor in completing a project is that everyone must perform their job properly. Each worker, from the engineer in the drafting room to the electrician, should strive to produce excellence and craftsmanship. If each person does the best job they know how to do, the result will be a safe, clean, and productive project; giving the owner a quality product for its investment, and giving all employees an opportunity to earn a good living *without injury or suffering*.

All incidents are preventable if we focus on the safe work habits found in this manual and maintain our attitude and awareness.

It is impossible to include all procedures to meet all contingencies in this manual, therefore, if circumstances arise that are not provided for, contact your supervisor or the Corporate Safety Director for assistance.

 Sachs Electric <i>employee owned</i>	Operating Safety Procedures Work Safe Program	Revision 1 December 2005
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police report along with the list of items missing and their value are to be forwarded to the project manager.

N. DISCIPLINARY ACTION

To protect innocent persons from the actions of careless or uncooperative employees, and to comply with the requirements of the Occupational Safety and Health Act, every job is requested to institute a program of disciplinary action with regard to violations of safety rules. This policy is published elsewhere and shall be discussed with all personnel prior to starting work on a project.

Other Requirements

- Persons intentionally or unintentionally violating safety rules, thereby being responsible by their actions for incidents causing personal injury, death, or damage to property, may be suspended from employment pending the outcome of a full investigation of the incident. The results of the investigation will be a factor in determining whether the individuals involved will be terminated for cause, disciplined otherwise, or returned to regular work status.
- Offenses can be observed and reported by any employee. Reports of offenses must be given to a member of Sachs' project management staff or to the Corporate Safety Director.
- An offense does not have to be observed to be considered a recordable offense. If an offense can be substantiated by facts, it will be considered a recordable offense.
- The employee or employees who violate the Sachs Work Safe Program will be charged with an offense regardless of whether their action was willful or unintended. It is the employee's obligation to know the rules and regulations. The company is to respond to the employee's request for information and/or equipment in order to work safely, but in no event is the employee to put himself or herself in an unsafe work situation.

 Sachs Electric <i>employee owned</i>	Operating Safety Procedures Work Safe Program	Revision 1 December 2005
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- Any supervisory or management employee who observes an offense and does not actively attempt to rectify the offense will be judged as having also committed the offense.
- If any employee disputes the determination of an offense or how an offense is classified, the employee may appeal the determination or classification first to the Sachs Department Head responsible for the project, then to the Sachs Corporate Safety Director, and then to the Sachs CEO. All decisions of the Sachs CEO are final.

- These Disciplinary Procedures do not supersede or replace disciplinary actions—including termination of employment—resulting from work rule infractions such as, but not limited to, tardiness, excessive absenteeism, insubordination, substance abuse, and related infractions.

O. REPORTS AND RECORD KEEPING

Every project is required to keep records and reports with regard to safety and insurance. Most of the items of concern have been described in the previous sections of this manual. Samples of the forms to be used and detailed instructions for completing and filing each type of form are included in the Sachs Work Safe Program. Environmental, Safety and Health Manual.

P. OSHA 300 LOG

Per the OSHA standards, Sachs Electric maintains an OSHA 300 Log at our St. Louis office. This log lists recordable injuries for the current year and is posted the period February 1 to April 30 of the year following the year covered by the form for viewing. Out of town projects where the duration is approximately one year or longer must also maintain an OSHA 300 Log for that project site. It is our vision at Sachs Electric to strive for zero injuries through our commitment to safety.

Q. REPORT OF INJURY

Sachs Electric requires a Foreman's Incident Investigation Report form to be filled out by the foreman and submitted to the lead supervisor within 24

 Sachs Electric <i>employee owned</i>	Operating Safety Procedures Work Safe Program	Revision 1 December 2005
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3. Brass System

The brass system as established on the project is to be used by all employees. Any employee entering or leaving the project at times other than normal must report to the Sachs main jobsite office for picking up or dropping off brass.

4. Working Hours

Every employee is expected to give 8 hours work for 8 hours pay. Employees are required to be at their place of work at the designated starting time and quitting times. Ten minutes will be considered sufficient time for tool pickup at the close of the shift.

5. Coffee Breaks

Organized coffee and/or rest breaks are prohibited. Employees may take their thermos to a point adjacent to their place of work as long as the practice is not abused. Drinking of coffee in trailers, sheds or similar locations during working hours will not be allowed.

6. Lunch

Lunchtime is from 12:00 P.M. to 12:30 P.M.

7. Absenteeism

Employees shall notify Sachs Electric Company by collect phone call at the jobsite phone listed below or 1-636-532-2000 xt-164 anytime during the hours of 6:30am & 9:00am. Monday through Fridays, except holidays, if he expects to be off work. Three days or longer absence without notification will result in automatic discharge. Chronic absenteeism or tardiness will be grounds for discharge.

8. Safety

Disregard of safe work practices, failure to use furnished safety equipment, or willful violations of OSHA safety rules will result in immediate discharge. Report all accidents or injuries no matter how minor.

9. Grievance

Any employee who has a grievance, whether it be jurisdictional or a matter of safety, will notify the steward. The steward will investigate same, and then file written notice to the foreman. If the grievance is not settled by this

EXHIBIT H

EMPLOYEE DISCIPLINARY WARNING (CHECK ONE - VERBAL WRITTEN)

The following employee was given a notice of warning and informed that subsequent violations would be cause for discharge.

NAME: Justin Griffin JOB NAME: CAI - FLATS
 EMPLOYER: Sachs Electric Company DATE: 3-3-17

CHECK THE VIOLATIONS BELOW THAT THE EMPLOYEE IS GUILTY OF:

- | | |
|--|--|
| <input type="checkbox"/> Absenteeism with out notice or excuse | <input type="checkbox"/> Improper Conduct |
| <input type="checkbox"/> Carelessness affecting safety | <input type="checkbox"/> Inability to follow job instructions |
| <input type="checkbox"/> Defective Work | <input checked="" type="checkbox"/> Insubordination |
| <input type="checkbox"/> Destruction of property | <input checked="" type="checkbox"/> Leaving job without permission |
| <input type="checkbox"/> Dishonesty | <input type="checkbox"/> Not capable of performing job assignment |
| <input checked="" type="checkbox"/> Does not follow instructions | <input type="checkbox"/> Poor housekeeping |
| <input type="checkbox"/> Drinking on the job | <input checked="" type="checkbox"/> Poor productivity |
| <input type="checkbox"/> Failure to comply with job work rules | <input type="checkbox"/> Reporting to work under the influence of alcohol or drugs |
| <input type="checkbox"/> Failure to use safety equipment | <input type="checkbox"/> Tardiness |
| <input type="checkbox"/> Falsifying work hours or work performed | <input type="checkbox"/> Violation of safety rules |
| <input type="checkbox"/> Fighting on the job | <input type="checkbox"/> Other |

Explain below why the warning was given, setting forth all the facts in detail:

HAD ISSUES WITH OTHER CREWS (FOREMANS) MAKING DIRECTION ON TASK/ LEAVING WORK AREA, POOR WORKMANSHIP, NO INTEREST IN WORKING/ COMPLAINTS FROM OTHER CREW MEMBERS ON HAVING TO REWORK HIS SCOPE OF WORK/ HAD OTHER WAITE UPS SIMILAR TO THIS ONE.

Employee: I have read this warning and agree to correct the situation. I understand that future violations may be cause for discharge.

Employee Signature

REFUSED TO SIGN

G.F, FM, or PM Signature

Keith Hagan

G.F., FM, or PM Printed Name

Copies distributed to: Employee, Local, NECA, Labor Office

Form located on J: Drive\Labor\FORMS

EXHIBIT I

ORIGINAL COPY-EMPLOYEE, 1 COPY-LOCAL UNIO
ONE COPY- ST.LOUIS NECA 1 COPY - EMPLOYER'S FILE

NOTICE OF TERMINATION

TO BE SENT TO ALL PARTIES WITHIN THREE WORKING DAYS AFTER AN EMPLOYEE'S EMPLOYMENT IS TERMINATED

Name: GRIFFIN, JUSTIN A Social Security #: REDACTED Type Of Work: Commercial
Home Address: REDACTED
Classification: CW Local Union #: 234CW
Hire Date: 11/10/2016 Term Date: 3/3/2017 Last Day Worked: 3/3/2017 Term Given: YES

REASON FOR TERMINATION

- | Layoff | Discharge | Voluntary Quit |
|--|---|--|
| <input type="checkbox"/> Reduction In Force | <input checked="" type="checkbox"/> Absenteeism | <input type="checkbox"/> Dissatisfied Pay |
| <input type="checkbox"/> RIF Mutually Agreed | <input type="checkbox"/> Not Qualified | <input type="checkbox"/> Dissatisfied Working Conditions |
| <input type="checkbox"/> Job Completed | <input checked="" type="checkbox"/> Refuses To Work As Directed | <input type="checkbox"/> Dissatisfied Distance To Work |
| <input type="checkbox"/> Job Shutdown | <input type="checkbox"/> Drinking Intoxicants | <input type="checkbox"/> To Take Another Job |
| <input type="checkbox"/> Other | <input type="checkbox"/> Fighting | <input type="checkbox"/> To Seek Another Job |
| | <input type="checkbox"/> Disregard Of Safety Instructions | <input type="checkbox"/> Sickness Or Non-Occup Injury |
| | <input type="checkbox"/> Misconduct | <input type="checkbox"/> Occupational Injury |
| | <input type="checkbox"/> Non Compliant W/ Co. Policy | <input type="checkbox"/> Leaving Town |
| | <input type="checkbox"/> Project Work Rules | <input type="checkbox"/> Personal Reasons |
| | <input type="checkbox"/> Other | <input type="checkbox"/> Other |

Explanation: Refuses to work as directed
Excessive absenteeism

Job Name: Cal Flats
Job Address: _____
Employer: SACHS ELECTRIC COMPANY
Date: 3/3/2017 Signed: Jose Torres Title: Superintendent

ORIGINAL COPY-EMPLOYEE, 1 COPY-LOCAL UNIO _____
ONE COPY- ST.LOUIS NECA 1 COPY - EMPLOYER'S FILE

NOTICE OF TERMINATION

TO BE SENT TO ALL PARTIES WITHIN THREE WORKING DAYS AFTER AN EMPLOYEE'S EMPLOYMENT IS TERMINATED6

Name: GRIFFIN, JUSTIN A Social Security #: REDACTED Type Of Work: Commercial
Home Address: REDACTED
Classification: CW Local Union #: 234CW
Hire Date: 11/10/2016 Term Date: 3/3/2017 Last Day Worked: 3/3/2017 Term Given: YES

REASON FOR TERMINATION

- | Layoff | Discharge | Voluntary Quit |
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| <input type="checkbox"/> Job Completed | <input checked="" type="checkbox"/> Refuses To Work As Directed | <input type="checkbox"/> Dissatisfied Distance To Work |
| <input type="checkbox"/> Job Shutdown | <input type="checkbox"/> Drinking Intoxicants | <input type="checkbox"/> To Take Another Job |
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| | <input type="checkbox"/> Disregard Of Safety Instructions | <input type="checkbox"/> Sickness Or Non-Occup Injury |
| | <input type="checkbox"/> Misconduct | <input type="checkbox"/> Occupational Injury |
| | <input type="checkbox"/> Non Compliant W/ Co. Policy | <input type="checkbox"/> Leaving Town |
| | <input type="checkbox"/> Project Work Rules | <input type="checkbox"/> Personal Reasons |
| | <input type="checkbox"/> Other | <input type="checkbox"/> Other |

Explanation: Refuses to work as directed
Excessive absenteeism

Job Name: Cal Flats
Job Address: _____
Employer: SACHS ELECTRIC COMPANY
Date: 3/3/2017 Signed: Jose Torres Title: Superintendent

Exhibit 4



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Attorneys for Plaintiff Justin Griffin

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Justin Griffin, an individual, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

Sachs Electric Company, a Missouri corporation;
First Solar, Inc., a Delaware corporation;
California Flats Solar, LLC, a Delaware Limited
Liability Company, and Does 1 through 10,

Defendants.

Case No. 17-cv-03778-BLF

**DECLARATION OF JUSTIN GRIFFIN IN
OPPOSITION TO DEFENDANT SACHS
ELECTRIC COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

Date: October 25, 2018

Time: 9:00 a.m.

Courtroom: 3

Action Filed: April 27, 2017

Removed: June 30, 2017

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**DECLARATION OF JUSTIN GRIFFIN IN OPPOSITION TO MOTION FOR SUMMARY
JUDGMENT**

1 I, Justin Griffin, declare:

2 1. I have personal knowledge of the following facts.

3 2. I am the plaintiff in this action.

4 3. I began working as a solar panel installer (“Installer”) for Sachs Electric Company (“Sachs”) in
5 or around November 20, 2016 at the California Flats Solar Site (“the Solar Site”) in Monterey
6 County, California. My employment with Sachs was wrongfully terminated in or around March
7 3, 2017.

8 4. I signed up to start working for Sachs at the Solar Site through IBEW Local 234 Union that then
9 dispatched me to the Solar Site. The Union dispatch provided me with a start time, job location,
10 rate of pay and told me to report to the Security Gate Entrance of the Solar Site on my first day
11 of work.

12 **The Security Gate Entrance to the Solar Site**

13
14 5. The Solar Site is on the Jack Ranch. To get to the Solar Site, it was necessary to pull off
15 Highway 41 and drive onto Turkey Flats Road. The security gate entrance to the Solar Site was a
16 short distance from the intersection of Highway 41 and Turkey Flats Road (“Security Gate
17 Entrance”). At the beginning of Turkey Flats Road, there were many acres of land surrounded by
18 a fence. This fence enclosed the entire Solar Site. The Security Gate Entrance is across Turkey
19 Flats Road.

20 6. To get to the daily Installation Sites where the solar modules were being installed, the other
21 workers and I were required to go through the Security Gate Entrance at the beginning of Turkey
22 Flats Road and drive on Turkey Flats Road (“the Solar Site Access Road”) to the parking lot
23 where I was assigned to park. The distance between the Security Gate Entrance and the parking
24 lot was approximately 10 miles or so.

25 7. At my new hire orientation, I was told that the only way for workers to get into and out of the
26 Solar Site was through the Security Gate Entrance and the Solar Site Access Road and that we
27 should always use the Security Gate Entrance to enter and leave.

1 8. While I worked at the Solar Site, the parking lot was about a 40-45 minute drive on the Solar Site
2 Access Road from the Security Gate Entrance.

3 9. At my new hire orientation, we were told that there was no other way to get to the parking lots
4 on the Solar Site other than going through the Security Gate Entrance and driving the 10 or so
5 miles to the parking lot. There was no possible way to walk or ride a bicycle from the Security
6 Gate Entrance to the parking lot in the morning and get to work on time or to get from the
7 parking lot to the Security Gate Entrance on time at the end of the day, because we were
8 restricted as to when we were allowed to be on the Solar Site.

9 10. When I first started working at the Solar Site, I was not sure whether I would be paid for the
10 drive on the Solar Site Access Road. After I had worked on the Solar Site for a while and I
11 started to receive my paychecks, I learned that the other workers and I were not being paid for
12 the time it took us to drive from and to the Security Gate Entrance. While I worked at the Solar
13 Site, I heard a lot of workers complain about not being paid for this travel time.

14 **New Hire Orientation and Worker Meetings**

15
16 11. On my first day of work, I was required to attend a new hire orientation that was conducted by
17 personnel from Sachs, McCarthy Construction (who I understood was the general contractor)
18 and First Solar (who I understood was the owner of the Solar Site). I saw people at the
19 orientation that had badges that said all of those company names.

20 12. During the time that I worked on the Solar Site, there were also many other worker meetings that
21 included safety meetings, monthly all-hands meetings and other meetings. These meetings were
22 also conducted by a combination of personnel from Sachs, McCarthy and First Solar.

23 13. On some days, company-wide safety or all-hands meetings for all or most of the workers were
24 scheduled. Management people from McCarthy, First Solar, and Sachs generally conducted
25 those meetings and they would last longer.

26 14. At these meetings, we were constantly told about the job site rules and the rules for the Solar Site
27 Access Road.

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15. At these meetings, we was told by Sachs and McCarthy management that McCarthy was also running the Solar Site and that the workers needed to follow all of the McCarthy rules and instructions just the same as they needed to follow the Sachs rules and instructions and that McCarthy had the same authority as Sachs in terms of disciplining, suspending and terminating Sachs workers.

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Rules about being on the Solar Site only between Sunrise and Sunset

16. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy personnel that workers were not allowed to enter the Solar Site until the sun had fully come up. Although Sachs and McCarthy personnel gave us the approximate start time for each day, the start time did not always match when the sun fully came up. As a result, there were times when other workers and I would arrive at the Solar Site and be required to sit in our vehicles in a line outside the Security Gate Entrance for approximately 10 or more minutes waiting for the sun to fully come up and for the Security Gate Entrance to be opened. Once the sun was fully up, the security guards at the Security Gate Entrance would start letting us badge in through the gate.

17. Sachs and McCarthy personnel also told us that all workers had to be off the Solar Site by sunset. They told us that if we left too early, drove too fast and arrived at the Security Gate Entrance too early at the end of the day, we could be suspended or terminated.

Badging In and Out at the Security Gate Entrance

18. On my first day, before I had a scan-in ID badge, I had to park to the side of the Turkey Flats Road before going through the Security Gate Entrance and walk up to the security guards. There, I gave the security guards my name and the company that I was supposed to be working for. The security guard then checked my information on a computer and printed out a temporary ID badge. They then let me drive my vehicle through the Security Gate Entrance.

19. When I got my permanent scan-in ID badge, it had my picture and name on it. My badge also said both McCarthy and Sachs on it.

1
20. At my new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that
2 workers could not go beyond the Security Gate Entrance without their badges and without being
3 scanned in and that once we entered the Solar Site, we had to have our badges on us at all times
4 until we exited the gate at the end of the day and were scanned out.

5
21. At my new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that if
6 a worker forgot his or her scan-in badge, the worker would not be allowed to work without either
7 going home and getting his or her badge or having a new badge made for the worker. We were
8 told that, if a worker lost his or her badge, the Solar Site would charge that worker a fee to get a
9 new one.

10
22. There were generally two security guards at the Security Gate Entrance. Sometimes they would
11 both scan badges with one security guard on each side of the vehicle. At other times, one security
12 guard would stay in the guard shack while the other guard scanned the workers' badges. The
13 security guards would scan each worker's badge in the vehicles before letting us go through the
14 Security Gate Entrance.

15
23. The security guards were in radio contact with other locations on the Solar Site. I know this
16 because I sometimes saw and heard the security guards call people on their radios or be called by
17 people while they were processing workers through the Security Gate Entrance.

18
24. Because there was only one Security Gate Entrance and only two security guards to scan people
19 in, a line of cars would almost always form at the beginning of the day, and workers would have
20 to wait in line in their vehicles while workers in vehicles ahead of them were being scanned in.
21 Depending on where you were in the line, the wait in the line to get through the Security Gate
22 Entrance could average between 10 to 20 minutes. The same kind of line and wait would almost
23 always happen on the way out of the Security Gate Entrance at the end of the day.

24
25 **Workers Were Monitored While on The Solar Site Access Road**

26
25. At my new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that
27 our badging in and badging out were being tracked and that all workers were being monitored
28 and "policed" while we were on the Solar Site and the Solar Site Access Road. Sachs and

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McCarthy personnel said that both Sachs and McCarthy had the power to terminate us workers on the Solar Site for violating any of the job site rules, including for violation of the rules that applied to the Solar Site Access Road -- even if the worker was officially working for the other company.

26. At my new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that we were required to enter the Security Gate Entrance on time and leave on time and that they would track our badge times. We were told that, if we were late arriving to the Solar Site or if we left early, either Sachs or McCarthy could suspend or terminate us.

27. At my new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that from the time that we went through the Security Gate Entrance in the morning until we went out of the Security Gate Entrance at the end of the work day, we were subject to all of the job site rules and could be terminated at any time for violating them.

28. At my new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that we were subject to having our bodies, personal property and vehicles searched by Sachs, McCarthy and First Solar personnel at any time that we were inside the Security Gate Entrance or on the Solar Site Access Road. During the time that I worked at the Solar Site, I recall seeing Sachs and McCarthy personnel searching worker lunch boxes and vehicles to look for alcohol and drugs after they had gone through the Security Gate Entrance.

29. At my new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that we were subject to drug and alcohol testing at any time we were inside the Security Gate Entrance or on the Solar Site Access Road.

30. While I was working on the Solar Site, I recall seeing workers wearing McCarthy and Sachs uniforms and in company vehicles on the Solar Site Access Road monitoring workers while they were driving on the road.

31. From the time that I entered the Security Gate Entrance in the morning until I exited the Security Gate Entrance at the end of the day, I believed that I was under the control of Sachs, McCarthy and First Solar because of all of the job site rules that we were subject to, because they were

1 always reminding us of the rules and because we were constantly being warned about being
2 terminated if we violated the rules.

3
4 **Rules On The Solar Site Access Road**

5 32. At my new hire orientation and at worker meetings, I was told that all the job site rules applied
6 once we entered the Security Gate Entrance until we left the Security Gate Entrance. These rules
7 included, among other rules, safety and personal protective equipment rules, discrimination
8 rules, anti-harassment rules, environmental rules, alcohol and drug policies, rules related to being
9 subject to searches for alcohol, drugs and other things, no practical jokes, no horseplay rules, no
10 gambling rules, no photography, no loud music and other rules.

11 33. At the new hire orientation and at worker meetings, Sachs and McCarthy personnel told us about
12 the “rules of the road” that applied to the Solar Site Access Road. These rules were in addition to
13 signs that were posted before and after I entered the Security Gate Entrance and in materials that
14 we were given for the job site.

15 34. There were many workers on the Solar Site while I was working there. At my new hire
16 orientation meeting and at worker meetings, Sachs and McCarthy personnel told us that there
17 were hundreds of workers on the Solar Site who came through the Security Gate Entrance and
18 traveled to their work areas using the Solar Site Access Road at the same time at the beginning of
19 the day and left the Solar Site using the Solar Site Access Road at the end of the day. We were
20 told that there were also many big delivery and water trucks that would be using the road. We
21 were told that, because of the large number of workers and the large number of these big trucks,
22 everyone was required to strictly follow the rules of the road.

23 35. At my new hire orientation meeting and at worker meetings, Sachs and McCarthy personnel told
24 us that workers had been suspended or terminated for things they did wrong on the Solar Site
25 Access Road, such as exceeding the speed limit.

26 36. At my new hire orientation meeting and at worker meetings, Sachs and McCarthy personnel told
27 us that we were required to immediately report any accidents or damage to any vehicle that
28 occurred while driving on the Solar Site Access Road.

Signs at the Security Gate Entrance and on the Solar Site Access Road

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3 37. There were signs along Turkey Flats Road at and around the Security Gate Entrance displaying
4 numerous instructions. At my new hire orientation and at worker meetings, Sachs and McCarthy
5 personnel told us that we were required to obey the instructions on these signs. I recall that these
6 instructions, among other things, included things like:

- 7 • speed limit
- 8 • no smoking
- 9 • no drugs
- 10 • no firearms
- 11 • no photography
- 12 • animal crossing
- 13 • kit fox zone or area

14 38. I also observed signs with pictures of animals that we needed to look out for, be aware of, and
15 not interfere with or harm while on the Solar Site.

Following The Pace Car

16
17 39. At my new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that
18 once we drove through the Security Gate Entrance in the morning, the first vehicle was supposed
19 to stop at the side of the road and the vehicles that came in next had to wait in line until a pace
20 car began leading us up the Solar Site Access Road to the parking lot. The pace car was typically
21 a McCarthy work truck.

22 40. That pace car would then lead the workers' vehicles along the Solar Site Access Road and
23 controlled the progress and speed along the Solar Site Access Road to the parking lots.

Rules About Speeding In The Road

24
25 41. I recall that there were signs with speed limits mostly between 5 and 10 miles per hour posted on
26 the Solar Site Access Road.
27
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2 42. At new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that there
3 were speed radar machines and cameras installed along the Solar Site Access Road. I saw some
4 of them on the Solar Site Access Road. Two of these radar machines were located on each side
5 of the Solar Site Access Road at approximately the midway point between the Security Gate
6 Entrance and the parking lot and were digital signs that would tell us how fast we were going.

7 43. At times, I was only allowed to drive at 5 miles per hour on the Solar Site Access Road because
8 of animals near the road, the conditions of the road, cattle grids, the road being wet because of
9 the Solar Site watering of the road, poor road conditions and other reasons.

10 44. At new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that they
11 were monitoring our activities and the speeds on the Solar Site Access Road and that if we
12 violated the speed limits or “rules of the road” or other job site rules we would be suspended or
13 terminated.

14 **Rules about Passing on the Solar Site Access Road**

15 45. Sometimes on the Solar Site Access Road, gaps would form between cars for any number of
16 reasons, such as animals on the road, someone’s car breaking down, someone driving a more
17 slowly than the rest of the cars or a whole range of the conditions related to the road. Regardless
18 of these gaps, at my new hire orientation and at worker meetings, Sachs and McCarthy personnel
19 told us that we were not allowed to go above the speed limit or pass another moving vehicle for
20 any reason -- except when a car had broken down or pulled over to the side of the road.

21 **Rules About Livestock And Animals On The Solar Site Access Road**

22 46. The Solar Site Access Road was a long, rough double-lane dirt road that was very difficult to
23 drive on and very hard on vehicles. Along the Solar Site Access Road, there were a number of
24 steel cattle grids that we were required to drive over. Cattle grazed along the Solar Site Access
25 Road and would frequently be very near or on the road, and they interfered with the ability of
26 vehicles to travel on the road.
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47. At new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that we were not allowed to disrupt the local wildlife or cattle in any way while we were driving on the Solar Site Access Road. We were told that, if we saw animals on or near the road, we had to let them do whatever they needed to do. I was told that this meant we could not honk, yell at them, throw things at them, push them out of the way with our vehicles, or do anything to attempt to get them to move off the road. I was told that we had to slow down or stop our vehicles and just stay in our vehicles and wait for them to get off the road. We were told that we mainly had to look out for cattle and kit foxes, but there were also a lot of other animals to watch out for. The presence of animals on or around the road frequently slowed down the drive on the Solar Site Access Road.

48. At new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that we were not supposed to honk our horns when we were driving on the Solar Site Access Road because our horns could disturb the local wildlife and the cattle. We were also told that we were not allowed to take pictures of the animals.

49. At my new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that we could not play loud music that could be heard outside our vehicles while we were on the Solar Site Access Road because the noise from the music could disturb the local wildlife and the cattle.

50. At my new hire orientation, we were told by Sachs and McCarthy personnel that we were not supposed to touch or feed anything to the local wildlife or cattle on the Solar Site or along the Solar Site Access Road.

Rules About Creating Dust On The Solar Site Access Road

51. At new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that there were dust control rules related to the Solar Site that required the workers not to create too much dust. We were told not to drive on the Solar Site Access Road in a way that created a lot of dust and that we needed to drive slowly if we were creating lot of dust.

1 52. We were also told that because of dust restrictions, water trucks would spray water on the Solar
2 Site Access Road to prevent the creation of too much dust by the vehicles. Because of this
3 watering, the Solar Site Access Road was sometimes muddy and slippery. When it was muddy
4 and slippery, we had to drive even more slowly and the drive was more difficult.

5 **Rules About Smoking**

6
7 53. At my new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that
8 we were not allowed to smoke either inside or outside of our vehicles while we were driving on
9 the Solar Site Access Road or inside or outside of our vehicles in the parking lot. We were told
10 that we could only smoke in designated smoking areas. We were also told that no smoking was
11 allowed at the portable toilet stations.

12 **Rules About Staying On The Solar Site Access Road**

13
14 54. At my new hire orientation and at worker meeting, Sachs and McCarthy personnel told us that
15 once we were released to drive on the Solar Site Access Road in the morning or at the end of the
16 day, we had to drive directly on the road to the parking lot in the morning and from our assigned
17 parking lot back to the Security Gate Entrance at the end of the day and that we were not
18 supposed to do anything other than drive directly on the road.

19 **Rules About Stopping on The Solar Site Access Road**

20 55. At my new hire orientation and in worker meetings, Sachs and McCarthy personnel told us that
21 we must strictly follow the “rules of the road” and keep the flow of traffic constantly moving on
22 the Solar Site Access Road because there were so many workers using the Solar Site Access
23 Road and so many big trucks were using it.

24 56. At my new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that
25 except for emergencies, we were not supposed to stop on the Solar Site Access Road at any
26 places that were not designated to stop. For example, we were told that we could stop on the
27 Solar Site Access Road where the portable toilets were located.

1 57. At my new hire orientation and in worker meetings, we were told that if we had to get out of our
2 vehicles for any emergency reason, we were not allowed to go outside of the boundary fences,
3 stakes and ribbons that ran about 15 feet or so along the side of the road. We were told that, if we
4 had to get out of our vehicles along the Solar Site Access Road for any reason, we were required
5 to leave the ground undisturbed and that we could not trample or disturb any plants or litter in
6 any way or relieve ourselves except at the portable toilet sites.

7
8 **Rules about Using Toilets while on the Solar Site Access Road**

9 58. There were a couple of portable toilets just outside of the Security Gate Entrance. At my new
10 hire orientation and at worker meetings, Sachs and McCarthy personnel told us that we could use
11 those toilets before entering the Solar Site if we needed to.

12 59. While I worked at the Solar Site, there were also a couple of places along the Solar Site Access
13 Road where portable toilets were set up. At my new hire orientation and at worker meetings,
14 Sachs and McCarthy personnel told us that if we needed to use the toilets during the drive on the
15 Solar Site Access Road, we had to use these portable toilets and could not stop and get out of our
16 vehicles to relieve ourselves at any location along the Solar Site Access Road other than at these
17 portable toilet sites.

18 **Poor Road Conditions**

19 60. The Solar Site Access Road was a rough gravel road. I recall seeing at least one car that had
20 broken down on the road.

21
22 **Arriving at the Parking Lot and Getting to Our Daily Installation Site**

23 61. At my new hire orientation, Sachs and McCarthy personnel told us that once we got to the
24 parking lot, we were required to park and walk to where buggies were parked that would take us
25 further into the Solar Site. The buggies were kind of like golf carts, and each one could carry
26 about five to six people. We were told to wait at the buggies until our whole crew was assembled
27
28

1 and to then get into a buggy, which would take us to either a safety meeting, an all-hands
2 meeting or our daily installation site (“Installation Site”).

3
4 62. At the end of workday, we were required to ride the buggies from the daily Installation Site to
5 the parking lot where our vehicles were located. We were told that we were required to ride the
6 buggies to get back and forth to the daily Installation Site. Because the distances between the
7 parking lot and our daily Installation sites were considerable, it was also not possible to walk
8 between them to get to and from work on time.

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10 63. While I worked at the Solar Site, the buggies were the only forms of transportation that I saw
11 that were available for transporting the workers between the parking lot and the daily Installation
12 Sites. For example, it was not possible for workers to drive their own vehicles from the parking
13 lots to the daily Installation Sites. We were told by Sachs and McCarthy personnel that we must
14 use the buggies to get to back and forth from our daily Installation Sites.

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Meal and Rest Breaks

64. At new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that we
were required to stay on the job site during the entire workday from the beginning of the
workday to the end of the workday. We were told that it would be a violation of the job site rules
if we reached the Security Gate Entrance too early at the end of the workday and that we could
be suspended or terminated if we violated that rule. We were told that we were required to eat
our lunches at our daily Installation Sites and that we could not go back to our vehicles in the
parking lots at any time during the workday. Sachs and McCarthy did not make the buggies
available to us workers to take us to the parking lot during our lunch breaks.

65. At our daily Installation Sites, the foreman or lead would keep track of the timing of our meal
and rest breaks and would tell us when to start and when to end our rest and meal breaks.

66. In my experience working at the Solar Site, workers were not provided separate shade structures
or seating for our breaks. When we took our breaks, we would have to either sit in the buggies or
on the ground under one of the solar arrays to try to get in the shade.

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67. During our breaks, we were permitted to make cell phone calls, but often we did not have any reception. Cell phone reception varied on the site, and depending on the area where we were allowed to eat or rest, we may not have service. Sachs and McCarthy personnel told us that even if we did not have good reception, we had to stay in our Installation Site area and were not permitted to walk to other locations where we might get better reception and make calls.
68. I recall Sachs and McCarthy personnel checking workers to see if we had any alcohol or drugs. They told us that they were checking people's cars in the parking lots and checking people's lunch boxes at our daily Installation sites. They did this at different times, including during our rest and meal breaks.
69. To my knowledge, I was never paid for the time I was on meal breaks or when my meal breaks or rest breaks were interrupted by Sachs or McCarthy personnel.

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Pay Check Pick Up

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70. Our paychecks were given to us at the Solar Site .
71. When Sachs and McCarthy called off work, they did not always make it clear how or when we would receive our paychecks. Sachs told us they would mail our checks if we requested them to do so, but then they seemed to retract that offer and did not mail mine. Rather than mailing my checks, Sachs required other workers and me to drive to the Security Gate Entrance and arrive at a specific time to receive our paychecks.
72. At times, due to weather conditions or for other reasons, Sachs and McCarthy would call off work, usually by sending us a message with as little as one day's notice. It was confusing to follow and difficult to plan for. For example, on some days, rain made the site conditions too wet to work and work was called off. If the work was called off because of rain, and it was a payday, we still had to drive to the Solar Site to pick up our paychecks at the Security Gate Entrance. We were not paid for this time.

Written Policies

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3 73. When I was hired, I was required to sign a form entitled Sachs Electric Company, Standard
4 Work Rules, California Flats Solar Facility. To the best of my recollection, the form attached as
5 *Exhibit 1* is the form that I signed.

6
7 **Purported Reasons for Terminating Me Are False.**

8 74. Sachs’ purported reasons for terminating me are false and pretexts for retaliating against me
9 because I complained about its wrongful behavior.

10
11 **The Lack of Personal Knowledge of the Sachs Declarants.**

12 75. There are four Sachs employees who submitted declarations: Keith Hagan (a crew foreman),
13 Michael Kinloch (a general foreman), Jose Torres (apparently, a general superintendent) and
14 Michael Rega (apparently a Vice President of Sachs).

15 76. Each of these four Sachs employees claims that he had knowledge about my work and my work
16 habits at the Solar Site.

17 77. As shown below, almost all of the persons either had no knowledge or limited knowledge about
18 my work.

19 78. Keith Hagan states that I worked under his supervision for only “the first week at the project,”
20 yet his declaration includes discussions about events that purportedly occurred throughout my
21 employment with Sachs about which he had no actual personal knowledge.

22 79. I never worked with Mr. Hagan after the first week of my employment and I did not have any
23 personal contact with him at all after that time until March 3, 2017 when I was wrongfully
24 terminated by Sachs.

25 80. Between the first week of my employment and March 3, 2017 when I was terminated, I never
26 worked with Mr. Hagan and never spoke with Mr. Hagan.

27 81. Except on the day of my termination, Mr. Hagan never criticized me and never said anything at
28 all negative to me about my work, my work habits or any other issue.

1 82. As a result, Mr. Hagan has no personal knowledge regarding any events that happened related to
2 me at the Solar Site after my first week of employment except for on March 3, 2017 when I was
3 wrongfully terminated.

4 83. During my first week of employment, just like my other new hire co-workers, I spent my time
5 learning how to do the job at the Solar Site. So, Mr. Hagan only had limited knowledge about
6 me when I was first learning how to do my job.

7 84. As for Michael Kinloch (a general foreman), he never criticized me about my work or work
8 performance or absenteeism while I worked on the Solar Site.

9 85. The only time I recall ever interacting with Mr. Kinloch that could be considered a criticism of
10 any kind was related to the incident described below when another foreman (Mr. Kuster) made
11 me get out of the front seat of a buggy and forced me to sit in the back seat of the buggy for what
12 I believed to be racially discriminatory reasons. Although Mr. Kinloch was not there at the time
13 of this incident, I believe that he is the person who gave me a write-up that claimed that I a
14 engaged in “Improper conduct” and “Does not follow instructions” because I did not want to
15 follow the instruction to get out of a front seat of buggy for reasons that I believed were racially
16 motivated.

17 86. As for Jose Torres (apparently a general superintendent), I do not remember ever seeing him on
18 the job site, or speaking to him.

19 87. Except for his involvement in my termination on March 3, 2017, Mr. Torres never gave me any
20 criticism while I worked at the Solar Site.

21 88. I also have never heard that Mr. Torres had ever criticized me or ever said anything at all
22 negative to me about my work, my work habits or any other issue.

23 89. As a result, I believe that Mr. Torres has no direct knowledge about me or the work that I
24 performed.

25 90. As for Michael Rega (apparently a Vice President of Sachs), I have never met him or spoken to
26 him or to my knowledge ever saw him at any time while I was performing any work at the Solar
27 Site.
28

**DECLARATION OF JUSTIN GRIFFIN IN OPPOSITION TO MOTION FOR SUMMARY
JUDGMENT**

- 1 91. Mr. Rega also never spoke to me to criticize me while I worked on the Solar Site.
- 2 92. I also have never heard that Mr. Rega had ever criticized me or ever said anything at all negative
- 3 to me about my work, my work habits or any other issue.
- 4 93. It is important to notice that, in Mr. Rega’s declaration, he never specifically states that ever had
- 5 any personal contact or interaction with me or ever personally observed me doing my work.
- 6 94. As a result, Mr. Rega has no personal knowledge regarding any events that happened related to
- 7 me during my employment at the Solar Site.
- 8 95. It is important to notice that, in fact, Sachs does not include any declarations of Michael Kuster
- 9 (the foreman involved in the buggy incident), Diane Shatkus (the woman worker involved in the
- 10 buggy incident), Antonio Lopez (my foreman on the day that I was fired), any of my other
- 11 foremen or crew leads or any of my crew members to support its allegations about me.

12 **False Claims about Work Deficiencies.**

- 13
- 14 96. During my employment, I was never verbally reprimanded or written-up for poor work
- 15 performance or poor workmanship – except for the write-ups on March 3, 2017 when I was
- 16 wrongfully terminated because I had complained about what I considered to be wrongful conduct
- 17 by Sachs employees.
- 18 97. Except for a write-up related to the incident related to the buggy seat and write-ups on March 3,
- 19 2017 (which was the last day of my employment), I was never given any verbal warning or
- 20 write-up at the Solar Site at all.
- 21 98. For example, Keith Hagan, Michael Kinloch and Jose Torres each claim that I had “significant
- 22 problems at work including, poor performance, insubordination, and absenteeism.” Mr. Hagan
- 23 claims that I failed to follow instructions and would do work my own way, and, as a result, it
- 24 would not be a professional installation. Michael Kinloch states that a frequent complaint from
- 25 my fellow crew members and foremen was that I would not follow instructions, insisted on
- 26 performing job tasks my own way, refused to do things the way I was taught, my work required
- 27 another crew member to fix errors or redo the job entirely. This is entirely hearsay and
- 28 unsupported by the testimony of any of the people that he refers to. Moreover, except for the

1 buggy incident, these purported issues were never told to me or put in writing and given to me
2 until the date of my termination and were, in fact, fabricated pretexts for Sachs' retaliatory
3 termination of me after I had made complaints regarding racial discrimination and the failure to
4 pay wages properly.

5 99. With regard to workmanship, Mr. Kinloch provides the only examples of my alleged work
6 performance failures. Mr. Kinloch claims that I did not put straps in level or put the pipes in
7 correctly, that I overstuffed or over-poured the biodegradable Styrofoam mixture or that I
8 sometimes did not pour enough mixture into the conduits, and finally that I "put mislabel[sic]
9 labels on wires and conduits." These allegations are all false. I did not put straps that were out of
10 level or install pipes incorrectly. Nor did I overstuff or over-pour the Styrofoam mixture or fail to
11 pour enough mixture into the conduits. Finally, I did not mislabel wire and conduits.

12 100. In fact, I did not install pipes/poles at all. Other workers installed the pipes/poles before my co-
13 workers and I arrived at any given Installation Site. My job was to work with coworkers to
14 mount and level converter boxes on beams over a previously installed pipes/poles. We would
15 level that box and tighten it into place with bolts, and straps or clips. This was a job carried out
16 by no fewer than two workers together at a time. At times, I would level while my coworkers
17 fastened the converter box and at other times the roles would be reversed. I was always working
18 alongside at least one other coworker during these installations. So, all of these installations
19 were the joint responsibilities of at least two workers.

20 101. Furthermore, my coworkers and I were regularly assigned to fix the work of previous crews.
21 Among the issues that we encountered and remedied were converter boxes that had slipped out
22 of level due to stripped bolts, failed fasteners or accidental knocking by other workers or
23 equipment. These boxes going out of level for a variety of reasons was a common issue and
24 regularly required fixing and finessing.

25 102. My crew and I were at times required to seal conduits using a self-expanding Styrofoam mixture.
26 I applied Styrofoam spray as instructed to each conduit. Nonetheless, the nature of the material,
27 the applicator, the temperature and the conduit itself all affected the how the foam would expand.
28

1 As a result, no worker could apply this material perfectly the first time - all the time, and some
2 amount of foam almost always needed to be shaved off or added once the initial application of
3 the foam had fully expanded. This was true for my crew as a whole and all of us participated
4 both in the initial application of the foam and the clean up of the foam after the initial application
5 expanded. At no time while I worked at the Solar Site was I informed by anyone that I, in
6 particular, had over-applied or under-applied the foam while I worked at the Solar Site.

7 103. Mr. Kinloch’s claim that I applied “mislabel labels on wires and conduits” is also simply false.
8 The wires had numbers on them and the labels had the same numbers. I had no difficulty with
9 the task of matching the labels to the wires and was never reprimanded or written-up by anyone
10 for mislabeling wires. On a few occasions, I identified mislabeled wires that had been installed
11 by other previous workers, and I fixed those wires when I saw these kinds of problems. At no
12 time while I worked at the Solar Site was I informed by anyone that I, in particular, had
13 mislabeled wires.

14 104. I never refused to do work as directed. I was never told by anyone that my work had to be redone
15 because of any failure on my part. I also had a good working relationship with my coworkers. In
16 fact, I was frequently assigned, along with other members of my crew, to fix the work of other
17 workers. It is illogical, if my work was not up to professional standards, that I would be assigned
18 to fix other workers’ mistakes. Furthermore, no documents or write-ups (other than the false and
19 pre-textual termination write-ups) confirm any claims of poor workmanship by me.

20 **Mr. Hagan’s Claim that I Abandoned My Job on My Second Day of Work Is False.**

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22 105. Mr. Hagan also makes the false claim that, “I distinctly recall on the second day on the job I had
23 seen him climb into a buggy and drive off, and disappear for hours. I had only seen him for 10
24 minutes in the morning that day, before he climbed into the buggy and disappeared, and I did not
25 see him again until the next day, and I told him that if he was going to work on my crew, then he
26 needs to stay with my crew. After that first week, he was transferred to Michael Kuster’s
27 crew...”
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1 106. These allegations are simply false. At no time, did I ever climb into or drive a buggy without
2 permission or instruction from a supervisor or foreman. I also certainly never “disappeared” from
3 the job during the workday in a buggy.

4 107. I have never had any conversation with Mr. Hagan about this incident occurring during the first
5 week of my employment, and Mr. Hagan provides no proof of this claim at all.

6 108. I also was never written up for this alleged incident.

7 109. Moreover, the idea that I could go off in a buggy without explanation or permission and
8 disappear for most of a workday without being written-up or terminated is absurd.

9
10 **Complaints about Car Problems**

11 110. Mr. Hagan claims that I complained about car problems and called out of work for car problems
12 fairly often. That is not true.

13 111. I only worked with Mr. Hagan in my first week of employment, and I had no car problems
14 during that week.

15 112. I also never personally spoke with Mr. Hagan about car problems.

16 113. In fact, as explained in more detail below, I believe that I only missed one day of work for car
17 problems -- which occurred on March 2, 2017 (for which I called in as required according to
18 Sachs policy). March 2, 2017 was only one day before I was wrongfully terminated.

19 **False Claims about Being Transferred to a Lot of Different Crews.**

20 114. Mr. Hagan’s claim that I was “transferred to Michael Kuster’s crew” is untrue and
21 mischaracterizes what happened. During my first week of employment, many, if not all, of the
22 new workers, including me, were not yet assigned to any specific crews. Rather, we new workers
23 would gather in or near the parking lot and crew leads or foremen would pick out workers that
24 they wanted to work with and tell them to come work with them for the day. After this first
25 week, the workers were assigned to specific foremen. It was at this point that I was assigned to
26 Michael Kuster’s crew. This assignment (what Mr. Hagan falsely claims was a “transfer”) had
27 nothing to do with alleged misbehavior or poor performance on my part. And, in fact, Sachs
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1 provides no documents (such as a write-up) that support the contention that I was “transferred”
2 for misbehaving or poor performance at this time.

3 115. Mr. Kinloch repeats this false claim by stating that I “worked on about 3 different crews” as a
4 result of my purported “poor performance, insubordination, and absenteeism.” Mr. Torres
5 repeats this claim stating that, because of my alleged “poor performance, insubordination, and
6 absenteeism,” I had worked on a couple different crews. All of this is also simply not true.

7 116. As described above, I was not assigned to a crew during my first week. I worked for whatever
8 foremen selected me and followed their instructions. Mr. Hagan was one of those foremen. After
9 the first week, I was assigned to Mr. Kuster’s crew. After working for three weeks on Michael
10 Kuster’s crew, an incident occurred (which is described in detail below) related to me being
11 forced by Mr. Kuster to move out of the front seat of a buggy into the back seat of the buggy for
12 what I believed to be racially discriminatory reasons. As a result of that incident, I was moved to
13 another crew. I remained with that second crew throughout the rest of my employment. Due to
14 reasons unknown to me, however, the crew leads and/or foremen for my whole crew changed
15 after I was assigned to that second crew. At no time, was I ever transferred to “about 3 different
16 crews” due to poor performance, insubordination, or absenteeism by me.

17 **The Buggy Seat Incident.**

18
19 117. As indicated above, before my termination date, I had received only one write-up that I strongly
20 contend was not fair and did not accurately describe what happened that day. This write-up
21 occurred on December 13, 2016 and was specifically related to an incident in which my foreman
22 forced me to move from the front seat of a buggy to the back seat of a buggy for what I believed
23 to be racially discriminatory reasons. Even though, poor performance, insubordination and
24 absenteeism are all possible categories listed on the write-up form, not one of those boxes was
25 ultimately checked when I was written up related to the buggy seat incident. Instead, the boxes
26 checked were “Does not follow instructions” and “Improper conduct.”

27 118. Throughout our employment, my co-workers and I boarded buggies (similar to 5-6 person golf
28 carts) for transportation between the parking lot and our daily Installation Sites. While I worked

1 at the Solar Site, I was never told that there were any rules or policies about only certain people
2 were permitted to sit in the buggies at certain seat positions. To my knowledge, Sachs has also
3 never produced any evidence that any such rules or policies were in effect during my
4 employment. In practice, seats were available on first-come, first-served basis, and workers of
5 my status regularly would sit in the front passenger seats of the buggies.

6 119. On December 13, 2016, my foreman, Michael Kuster (who is a Caucasian) drove up in a buggy
7 to pick up workers. I (an African-American) chose to sit in the front passenger seat of the buggy.
8 Initially, Mr. Kuster did not say anything or complain about me sitting there. When a Caucasian
9 woman worker arrived at the buggy, however, Mr. Kuster told me that I would have to move out
10 of my seat. This was not the first time that this happened to me. On another occasion Mr. Kuster
11 has made me give up my seat on a buggy to the same Caucasian worker and I had complied but it
12 had upset me when it happened before because I thought that it was also racially motivated.
13 When it happened this second time, I felt that it was almost certainly racially motivated. For me,
14 being required to give up a front seat and sit in the back of the buggy in favor of a Caucasian
15 person echoed a long history of racial bias and segregation in America and reminded me of the
16 case of Rosa Parks who righteously refused to give up her seat on a public bus to a Caucasian
17 person.

18 120. Initially, Mr. Kuster told me to move to the middle seat and give my seat to the other worker. I
19 offered that she could take the middle seat and stated that I did not understand why I should have
20 to give up my particular seat. I stated something like “Come on Kuster, you know I was here
21 first. Let the lady take the middle.” Some of my crew members voiced their agreement with me,
22 saying something like: “Come on Kuster that’s not right. J (Justin) was there first.” This seemed
23 to enrage Mr. Kuster and he began yelling at me to “get the f--k off the buggy.” I replied,
24 something like, ”I’ll get off the buggy, but you know it’s not right.” I then went to the back of
25 the buggy and sat in a back seat, but Mr. Kuster continued to yell at me to “get the f--k off” the
26 buggy. I put my seat belt on and refused to get out of the buggy. I told Mr. Kuster that had to get
27 to work like everyone else. Finally, Mr. Kuster drove to the location for the safety meeting that
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1 morning where he called two higher-ranking men over and told them in effect, “I don’t want this
2 guy” and claimed that I did not take orders.

3 121. Contrary to Sachs’ claims, I did make a complaint about this incident. In addition to refusing to
4 give up my seat, I also stated that the situation was “unfair,” and complained to Mr. Kuster that
5 Kuster knew his demand that Plaintiff give up his seat was “not right.” In retaliation therefore, I
6 was written up and placed on a new crew.

7 122. In Mr. Kinloch’s declaration, he states that the woman worker’s name was Diane Shatkus. It is
8 important to notice that Sachs does not put in any declarations for Mr. Kuster, Ms. Shatkus or
9 any of my other crew members who were actually present when this buggy incident actually
10 happened.

11 123. Mr. Kinloch claims that Plaintiff “did not want to sit in the back of the buggy during a ride to the
12 project while a female journeyman electrician was seated in the front on the outside so that she
13 could talk to Michael Kuster, the foreman on that particular crew, about work related issues.”
14 Mr. Kinloch was not present when the seating incident occurred so his statements about the
15 incident or what Mr. Kuster thought or Ms. Shatkus though are clearly just hearsay or
16 speculation.

17 124. Regarding the buggy incident, Mr. Torres also was not present when the incident occurred and
18 admits in his declaration that his claims regarding Plaintiff’s performance are “based on my
19 conversations...” As a result, his statements about the incident and my performance are also
20 hearsay.

21 125. Mr. Kinloch claims that Mr. Kuster’s reason for giving Ms. Shatkus my seat was, “so that he
22 could speak with Ms. Shatkus.” Because Mr. Kinloch was not present when the buggy incident
23 occurred, he could only be guessing about what Mr. Kuster allegedly thought or could only be
24 basing what Mr. Kuster allegedly thought on hearsay from some unknown source. Because
25 Sachs has not provided any declaration from Mr. Kuster about this buggy incident, it is really
26 unknown what Mr. Kuster thought about why he wanted to move me from my seat.
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1 126. Mr. Torres in his declaration says he was informed by Keith Hagan, Michael Kinloch, Michael
2 Kuster and “others” that I got into arguments with them, but neither Mr. Hagan nor Mr. Kinloch
3 describes any such arguments with me and Mr. Kuster provides no declaration whatsoever.
4 Except for the buggy incident involving Mr. Kuster, I did not have any arguments with anyone at
5 Sachs. As for the buggy incident with Mr. Kuster, I did not consider that to be an argument but
6 instead I considered it to be a valid complaint about what I believed to be racially discriminatory
7 actions by Sachs employee.

8 127. It is again important to notice that the only declarations submitted by Sachs are declarations of
9 Mr. Kinloch and Mr. Rega who were not there when the buggy incident happened. Both of these
10 men have no personal knowledge about the buggy incident because they were not present when
11 the incident happened and could only have obtained information about it from hearsay
12 statements of others.

13 128. In his declaration, Mr. Rega falsely states the following related to the buggy incident: “On or
14 about December 13, 2016, Mr. Griffin received a written warning for numerous performance
15 problems, including failure to follow instructions and insubordination as reported by his
16 coworkers and supervisors...” In fact, in the write-up the box next to “Insubordination” is *not*
17 marked.

18 129. Furthermore, this write-up was apparently written based on Mr. Kuster’s version of what
19 happened and did not take into account any of my concerns that Mr. Kuster’s behavior was “not
20 fair.” The only check-marked boxes on Mr. Kuster’s write-up were “Does not follow
21 instructions” and “Improper conduct.”

22 130. With respect to the buggy incident, the fact is that I did not immediately follow instructions that I
23 believed were based upon racially discriminatory reasons. I complained about the situation
24 being “not fair,” I gave up my seat and I moved to the back of the buggy but I did not follow
25 Kuster’s crude and indefensible instruction to “get the f--k off the buggy.” I believe that the true
26 reason that I was written-up was that I attempted to stand up against and complain about an
27 instruction that I believed was an unfair and racially discriminatory action. Because Sachs treated
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1 my complaints about the unfairness of my treatment in the buggy incident “improper behavior,” I
2 felt that Sachs was condoning this racially discriminatory behavior.

3 131. Despite my complaints, to my knowledge, Sachs never conducted any investigation into the
4 buggy incident. I was certainly never interviewed about this incident as part of any
5 investigation. Instead, it appears from the declarations of Mr. Kinloch and Mr. Rega that Sachs
6 just took Mr. Kuster’s version of the story to be the truth and completely disregarded my
7 concerns. To me, the refusal to investigate my complaints is further evidence of discriminatory
8 and retaliatory intent.

9 **Sachs’ Claim about Me Being Absent.**

10
11 132. Except for March 3, 2017 (which was the day that I was wrongfully terminated), I was never
12 verbally criticized or rewritten up for being absent.

13 133. As a result, Sachs claims that I “was terminated for excessive absenteeism” are false. I was not
14 excessively absent. As shown below, Sachs is omitting the facts related to the work site closures
15 to try to exaggerate the number of my absences.

16 134. Mr. Kinloch states that, “The project typically required all employees to work at least Monday
17 through Friday (and Saturdays as needed) but a short while after the buggy incident on
18 December 13, 2016, I noticed that Plaintiff started regularly missing days from work during the
19 week.” Similarly, Mr. Hagan declared that, “I noticed that a short while after he started working,
20 Mr. Griffin started regularly missing days from work during the week, and I would see him
21 usually only show up to work maybe 3 days per week.”

22 135. In fact, as confirmed by Sachs own records (which are attached as ***Exhibit JG3*** which was
23 produced by Sachs in this litigation), I began working on November 10, 2016 and worked 10
24 consecutive days thereafter without a day off until November 20, 2016 when Sachs regularly
25 began shutting down the site for rain or other reasons. Based on the messages I received (which
26 are attached as ***Exhibit 4***), and the records that were produced by Sachs in this litigation (See
27 ***Exhibit JG5***), from November 20, 2016 until the end of my employment on March 3, 2017,
28 Sachs shut the site down or otherwise limited the amount of workers, including me, who could

1 work at the site on at least 70 out of 99 days. At best, the site was open to work on average of
2 only about 2 days per week (including weekends) during this period between November 20,
3 2016 and the end of my employment on March 3, 2017. Some of these potential workdays were
4 weekends and some these workdays were partially called off. For others of these potential days,
5 Sachs did not provide me with clear or timely information as to whether or not work was called
6 off or whether or not I was scheduled to work.

7 136. It should be noted that Sachs, in its declarations, has not provided any records or schedules
8 showing the specific days that I was scheduled to work. Instead, Sachs falsely argues that I “was
9 absent from work multiple times at the very start of 2017, including January 2, January 17,
10 February 23, March 1, and March 2, and only showed up for work a total of six (6) days during
11 that very time period; in sum, for the first quarter of 2017, Mr. Griffin only worked about half of
12 the shifts he was scheduled to work.” (See Kinloch Declaration, para. 8.) This is simply not true.

13 137. In fact, on January 2, 2017, all work was called off at the site due to rain. Therefore, I could not
14 be considered “absent” because work did not take place on that date. On January 2, 2017,
15 according to Sachs own records (which are attached as *Exhibits JG4 and JG5*), the site was shut
16 down all day for rain. Regarding this date, I received the following text message: “UPDATE:
17 Site closed Sat 12/31. The site will open Mon 1/2 for limited Sachs Employees. All other
18 personnel work will resume TUE 12/3.” This message was sent to me at 6:02 p.m. on 12/30, less
19 than 12 hours before I had to leave for work the next day. This is an example of the kind of short
20 notice that was often given to us about schedule work changes. Also, this notice shows how
21 confusing and ambiguous scheduling instructions could be. The term “limited Sachs Employees”
22 is a confusing and ambiguous term. Also, it appears that “12/3” was a typo that really meant
23 “1/3.” (See *Exhibit JG4*.)

24 138. On January 17, 2017, work was also called off for, among other workers, module install crews --
25 a group Plaintiff belonged to. Therefore, I could not be considered “absent” because work did
26 not take place for my position on that date. On January 17, 2017, I received the following text
27 message a day for which Defendants sent another vague message “Cal Flat will be CLOSED to
28

1 all UNDERGROUND and MODULE INSTALL CREW TUESDAY January 17th. Work will
2 resume as job site conditions are verified.” I was part of the “MODULE INSTALL CREW,”
3 and, therefore, I was not supposed to work that day. Furthermore, I understood the sentence that
4 reads, “Work will resume as job site conditions are verified” to mean that only very limited work
5 was being performed on that day -- likely by site specialists. (See *Exhibit JG4*.)

6 139. On February 23, 2017, all work was also called off at the site due to rain. (See *Exhibits 4 and 5*.)
7 Thus, I could not be considered “absent” because work did not take place on that date. For this
8 date, I received the following message on February 22, 2017 at 5:12 p.m.: “Job site will be
9 closed Thursday, February 23rd to all Sachs Employees and Subs. Work will resume Friday
10 February 24th pending site conditions.” (See *Exhibit 4*.)

11 140. On March 1, 2017, I was sick and called in absent as soon as I was able, but Sachs did not credit
12 me with sick time or sick pay in accordance with California Law.

13 141. On March 2, 2017, I called in absent due to car troubles well before the start of my shift, in
14 accordance with Sachs policy.

15 142. As confirmed by Sachs own records (which are attached as *Exhibit JG3*), I worked seven (7)
16 days not six (6) in 2017. These dates were: 1/3/17; 1/28/17; 1/31/18; 2/1/17; 2/14/17; 2/15/17
17 and 3/3/17.

18 143. This means that I worked 7 of 9 days for which he was scheduled and on which the site was open
19 to me.

20 144. Sachs terminated me on March 3, 2017. This is a full 28 days before the end of the first quarter
21 of 2017.

22 145. Except for 2 days when I was sick (March 1, 2017) or had car trouble (March 2, 2017), the only
23 reason that I did not go to work was because Sachs had called the work off. For each of the two
24 dates that I called in absent for being sick and having car trouble, Sachs admits that I called in to
25 work. (See Torres Declaration, para. 5.) However regarding these two days, Sachs without any
26 real explanation claims that these absences were not considered by Sachs to be “excused” under
27 Sachs attendance policy. Both the Sachs Electric Company – Standard Job Work Rules,
28

1 California Flats Solar Facility 1/5/16 attached as *Exhibit JG1* (that I signed) and the 1/31/17
2 revision of that policy attached as *Exhibit JG2* (that I don't believe that I signed) define an
3 "Unexcused Absence" as: "No Call/No Show; Jury Duty —with no prior notice; Sick day with
4 no call." According to this policy, these two absences should have been considered unexcused
5 because I called in. Furthermore, in the same documents, an "Excused Absence" is defined as:
6 "Absence with call in; Jury Duty with prior notice; sick Days with call in up to 3 consecutive
7 days; after 3 days, a doctor's note will be required to return to work, no doctor's note will result
8 in 3 unexcused absences. YOU MUST CALL IN EACH DAY THAT YOU ARE ABSENT." By
9 this standard too, my two absences were excused because I called in.

10 146. Even though I called in sick on March 1, 2017, I was not provided with a sick day or sick pay for
11 that sick day. Instead, Sachs used this sick day as one of the pretexts for terminating me. It is
12 my understanding that they law does not allow Sachs to terminate me for taking a sick day.

13 147. This is the law that I believe applies. Labor Code Section 233 provides:

14 (a) Any employer who provides sick leave for employees shall permit an employee to use
15 in any calendar year the employee's accrued and available sick leave entitlement, in an
16 amount not less than the sick leave that would be accrued during six months at the
17 employee's then current rate of entitlement, for the reasons specified in subdivision (a) of
18 Section 246.5. This section does not extend the maximum period of leave to which an
19 employee is entitled under Section 12945.2 of the Government Code or under the federal
20 Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.), regardless of
21 whether the employee receives sick leave compensation during that leave.

22 ...

23 (c) An employer shall not deny an employee the right to use sick leave or discharge,
24 threaten to discharge, demote, suspend, or in any manner discriminate against an
25 employee for using, or attempting to exercise the right to use, sick leave to attend to an
26 illness or the preventive care of a family member, or for any other reason specified in
27 subdivision (a) of Section 246.5.

28 148. Labor Code section 234 provides:

An employer absence control policy that counts sick leave taken pursuant to Section 233
as an absence that may lead to or result in discipline, discharge, demotion, or suspension
is a per se violation of Section 233. An employee working under this policy is entitled to
appropriate legal and equitable relief pursuant to Section 233.